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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF:

INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Report of the Special Rapporteur on the independence of judges and lawyers, Dato'Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39

Addendum

Report on the mission to Mexico

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List of acronyms

CEDH	*Comisión Estatal de Derechos Humanos* State Human Rights Commission
CNDH	*Comisión Nacional de Derechos Humanos* National Human Rights Commission
DF	*Districto Federal* Federal District
EZLN	*Ejército Zapatista de Liberación Nacional* Zapatista National Liberation Army
IACHR	Inter-American Commission on Human Rights
MP	*Ministerio Público* Public Prosecutor's Office
PAN	*Partido de Acción Nacional* National Action Party
PGR	*Procuraduría General de la República* Office of the Attorney-General of the Republic
PGJE	*Procuraduría General de Justicia del Estado de la Republica* Office of the Government Procurator of the States of the Republic,
PGDF	*Procuraduría General del Distrito Federal* Office of the Government Procurator of the Federal District
PRI	*Partido Revolucionario Institucional* Institutional Revolutionary Party
PRODH	*Centro de Derechos Humanos "Miguel Agustín Pro Juárez"* Human Rights Centre "Miguel Agustín Pro Juárez"
TEPFJ	*Tribunal Electoral del Poder Federal Judicial* Electoral Tribunal of the Federal Judicial Power
TSJ	*Tribunal Superior de Justicia* High Court of Justice
UNAM	*Universidad Nacional Autónoma de México* National Autonomous University of Mexico

Executive summary

The present report concerns a mission to Mexico undertaken from 13 to 23 May 2001 by the Special Rapporteur on the independence of judges and lawyers.

The Special Rapporteur decided to undertake the mission because he had received information raising concerns about the state of the rule of law, the administration of justice and in particular the independence of the judiciary in Mexico.

During the mission, the Special Rapporteur visited Mexico City, Chihuahua city and Ciudad Juarez in Chihuahua State, and Tepic in Nayarit State. He met with government officials, members of the Supreme Court, members of the federal judiciary, members of the judiciary in the Federal District, Chihuahua State and Nayarit State, and members of bar associations. In addition, he met with representatives of non-governmental organizations, private individuals and representatives of international organizations.

The Special Rapporteur appreciates the willingness and openness of the Government and the various actors within the administration of justice to discuss problems affecting their respective institutions and agencies. The discussions with the NGO communities and civil society groups and individuals too were most constructive and informative.

Conclusions

During his mission, the Special Rapporteur observed that the process, begun in 1994, towards the establishment of a culture of judicial independence has been slow. Impunity and corruption appear to have continued unabated. Whatever the changes and reforms, they are not seen in reality. Public suspicion, distrust and want of confidence in the institutions of the administration in general and the administration of justice in particular are still apparent.

From his discussions throughout the mission the Special Rapporteur believes that there is political will and determination on the part of the present administration to reform the administration of justice. The President's pledge to appoint a special prosecutor to bring to justice those responsible for the abuses disclosed in the National Human Rights Commission's recent report on disappearances and his agreement to make public the nation's intelligence archives for the period 1970-1985 are steps in the right direction towards addressing the prevailing impunity in the country.

The Special Rapporteur finds that there is disparity between the quality of justice dispensed by the federal courts and the courts at the State level, largely because of disparity in the availability of resources. Under international law, the Federal Government of Mexico is answerable for the judicial system, whether it be at federal or State level. Access to justice for the vast majority of the people of Mexico is through the State courts.

The Special Rapporteur notes that reforms in the administration of justice are not coordinated. Such uncoordinated reforms can be unproductive for the overall due administration of justice. Other problems identified by the Special Rapporteur in relation to the administration of justice are: failure to comply with court judgements; lack of access to justice, particularly in the States; lack of effective investigation into allegations of judicial corruption.

The Special Rapporteur also expresses his concern about:

The want of impartiality of the military courts;

The absence of an organized legal profession;

The difficulties faced by lawyers in having to access their clients in prison and in police detention;

The continuing harassment and intimidation of lawyers, particularly those handling human rights related cases, and human rights defenders, and the failure of the authorities to provide protection to them;

The low quality of services provided by public defenders;

The violation of universally accepted fair trial procedures, including the acceptance as evidence of statements made under duress;

The delays caused by the amparo procedure, its complexity and its high costs, which hinder access to justice for all;

The general lack of access to justice for members of the indigenous community, the lack of interpreters and the lack of sensitivity within the legal system to their legal traditions;

The prevalence of slavery-like working conditions for indigenous immigrants on ranches in the State of Chihuahua;

The absence of independent tribunals for children and adolescents;

The inefficient and incompetent investigations into the more than 189 murders of women in Ciudad Juarez in Chihuahua since 1994;

The lack of equality of women.

Recommendations

Among the Special Rapporteur's recommendations are:

(a) A fixed percentage of the federal budget should be annually allocated for the judiciary. The supremacy of international treaties signed and ratified by the Government over domestic laws should be entrenched in the Constitution. The Constitution should also provide

that recommendations of national and State human rights commissions are binding on all authorities, including the Federal Government. States should provide in their respective constitutions for the allocation of a fixed percentage of the budget to the judiciary, full security of tenure for judges at all levels and the establishment of judicial councils;

(b) With regard to the judiciary:

An evaluation must be undertaken of the number of courts needed, both at the federal and State levels, to meet the needs of the people for access to justice;

In the evaluation of judicial appointments and continued legal education for judges emphasis must be given to international human rights standards and norms, including fair trial procedures. The processes of judicial appointments at all levels must be made transparent;

In order to maintain its independence and integrity the judiciary must be provided with the power, the machinery and the resources to enforce its own judgements.

Texts of laws and judgements of superior courts should be readily available to all involved in the administration of justice;

A uniform code of ethics for magistrates and judges at all levels should be produced and published;

In order to address judicial corruption consideration could be given for all magistrates and judges to declare their assets to the Judicial Council at the time of appointment and periodically thereafter.

(c) The Judicial Council must conduct its affairs independently of the Supreme Court and the other branches of government. Disciplinary proceedings must be transparent and conform with the Basic Principles on the Independence of the Judiciary;

(d) Crimes alleged to be committed by the military against civilians should be investigated by civilian authorities to allay suspicions of bias. Current legislation should be amended to provide for the civil judiciary to try members of the military accused of committing specific crimes of a serious nature against civilians, outside the line of duty. Urgent consideration should be given to removing the military from the policing of public law and order in society;

(e) The process of removing incompetent and inefficient personnel from the Public Prosecutor's Office must be intensified to gain public confidence;

(f) Public Defenders should be made independent of the executive. They must be adequately remunerated and given a manageable workload. They should be licensed lawyers and should be given adequate training;

(g) The Government should undertake without delay a study of the system of legal education and qualification for the legal profession, both at the federal and State levels. An independent mechanism or institution composed of judges, lawyers, academics and representatives of the Public Prosecutor's Office should monitor and administer uniform criteria for qualification to practise. Legislation should provide for a self-governing and self-regulating Bar association at both the federal and State levels. There must be a uniform code of ethics for the profession, enforceable by a self-disciplining mechanism established by law;

(h) All human rights violations, including allegations of widespread corruption, some high profile, need investigation and public accountability. Only then will the public begin to have confidence in public institutions. In this regard the Special Rapporteur urges all members of the previous administration to support strongly the present administration in addressing the scourge of impunity. Those known to have committed human rights violations should be removed from public office;

(i) Police and prison authorities must respect the rights of detainees to have access to lawyers;

(j) The Government must provide adequate protection to lawyers and human rights defenders against all forms of threat, harassment and intimidation. Reports of threats, harassment and intimidation must be thoroughly investigated and the perpetrators brought to justice;

(k) With regard to fair trial procedures:

The Government should ensure that confessions obtained by force cannot be used as evidence in trial proceedings. Statements made by detainees should not be considered as having probative value unless made before a judge. All complaints of torture should be duly investigated and the perpetrators should be prosecuted.

The Government should reopen all cases where there are serious grounds to believe that persons were convicted on the basis of confessions which were obtained by force.

The practice of judges delegating secretaries to record evidence should be discontinued.

The practice of conducting court proceedings in maximum security prisons should be discontinued.

(l) There should be a review of the amparo procedure with a view to making it less costly, simpler, speedier and more effective;

(m) The Government should examine the possibility of guaranteeing the independence of labour boards and agricultural tribunals and integrating them into the judicial power;

(n) The agreements on the rights and culture of the indigenous people signed by the Government and the Zapatista National Liberation Army (EZLN) should be implemented and indigenous traditions and law should be recognized to the extent that they do not conflict with

the main legal system. In the case of non-Spanish-speaking indigenous accused persons appearing before the courts, the presence and assistance of a qualified interpreter needs to be guaranteed. Immediate measures should be taken to abolish slavery-like working conditions for indigenous immigrants;

(o) The Law on the Protection of the Rights of Girls, Boys and Adolescents should be implemented without delay. Independent courts must be set up to deal with all juvenile cases;

(p) All unsolved murders of the women in Ciudad Juarez should be thoroughly investigated and the perpetrators brought to justice. Discriminatory practices against women in the workplace should be eliminated. Programmes should be developed to enhance access to justice for women.

Pilot Project

In order to strengthen the rule of law and the independence of the judiciary in Mexico in accordance with international standards, the Special Rapporteur proposes the development of a pilot project in two States, which could be implemented in the framework of the technical cooperation project at present being undertaken in Mexico by the Office of the United Nations High Commissioner for Human Rights.

Introduction

1. The present report concerns a mission to Mexico undertaken from 13 to 23 May 2001 by the Special Rapporteur on the independence of judges and lawyers, pursuant to the mandate contained in Commission on Human Rights resolution 1994/41, as renewed by resolutions 1997/23 and 2000/42 extending the mandate for a further three years. The mandate calls upon the Special Rapporteur inter alia to inquire into any substantial allegations transmitted to him and report his conclusions and recommendations thereon.

2. The Special Rapporteur had received information about widespread corruption among judges, lawyers and prosecutors, as well as claims of a high level of impunity. In general, the information received raised concerns about the state of the rule of law, the administration of justice and, in particular, the independence of the judiciary in Mexico.

3. On 24 January 2000, the Special Rapporteur met with the Permanent Representative of Mexico to the United Nations Office at Geneva, in order to discuss the possibility of undertaking a mission to Mexico. On 19 April 2000, the Government officially invited the Special Rapporteur to conduct an in situ mission later that year. Following the presidential elections in July 2000, which led to a change of government in Mexico, it was agreed that the mission would be postponed to after the new Government had taken office. During the fifty-seventh session of the Commission on Human Rights, held in Geneva from 19 March to 27 April 2001, the Special Rapporteur met with representatives of the Government of Mexico and it was agreed that the mission would take place in May 2001.

4. In the course of the mission, the Special Rapporteur met with the Special Ambassador for Human Rights, Ms. Mariclaire Acosta; the Minister of Public Security, Alejandro Gertz Manero; the Minister of the Interior, Santiago Creel Miranda; the Attorney-General, Rafael Macedo de la Concha; the Military Prosecutor General, Jaime Antonio López Portillo; the president of the National Human Rights Commission, José Luis Soberanes; the director of the Federal Institute for Public Defence, César Esquinca Muñoa; the director of the National Indigenous Institute, Marcos Matías Alonso; members of the Commissions of Justice and Human Rights of the Senate; and members of the Commissions of Justice and Human Rights of Congress. He also had joint meetings with representatives of the Ministry of Foreign Affairs, the Ministry of Defence, the Navy, the Ministry of Public Security, the Ministry of the Interior, the Office of the Attorney-General of the Republic, the National Indigenous Institute and the National Commission on Human Rights. He also met with the president of the Supreme Court, Dr. Genaro Góngora Pimentel, and the members of the Supreme Court; the magistrates of the federal First Collegial Tribunal in Penal Matters and the magistrates of the federal First Collegial Tribunal in Civil Matters; the Council of the Federal Judiciary; and the Director of the Institute for the Federal Judiciary, Julio César Vázquez Mellado. The Special Rapporteur also met with members of the Institute of Juridical Investigations of the National Autonomous University of Mexico (UNAM) and with the president of the Mexican Bar College of Lawyers, Claus von Wobeser, and members of the Bar.

5. The Special Rapporteur further met with the president of the High Court of Justice of the Federal District (DF), Juan Luis González Alcántara Carrancá, and magistrates and judges of the DF; the director of the DF Institute for Public Defence, Carlos Paniagua; the

Government Procurator of the DF, Bernardo Bátiz Vásquez; and the president of the Human Rights Commission of the DF, Luis de la Barreda Solórzano. In Chihuahua, the Special Rapporteur met with the State Government Procurator, Arturo González Rascón; the president, Pablo Zapata Zubiaga, and members of the State High Court of Justice; the president of the State Commission on Human Rights, Oscar Francisco Yañez Franco; and members of bar associations. In Ciudad Juarez, the Special Rapporteur met with the Special Prosecutor, Ms. Sally Ponce, and with first instance judges. In Tepic, the Special Rapporteur met with members of the bar organizations; the president, Jesús Ramirez García, and members of the State High Court of Justice, and members of the State Judicial Council; the State Government Procurator, Armando Bañuelos Ahumada; the Minister of the Interior, Victor Achondo Paredes; and the president of the State Commission on Human Rights, Ms. Luz María Parra Cabeza de Vaca.

6. The Special Rapporteur also met with representatives of the United Nations Development Programme (UNDP), the International Labour Organization (ILO) and other United Nations specialized agencies.

7. The Special Rapporteur also met with individuals and with representatives of non-governmental organizations dealing with issues related to his mandate, such as Dr. Jorge Carpizo, Dr. Ricardo Méndez Silva, Dr. Héctor Fix Zamudio, Ms. Pilar Noriega, Mr. Israel Ochoa Lara and representatives of the Human Rights Centre "Miguel Augustín Pro Juárez" (PRODH), the Mexican Commission for Human Rights, the Mexican Academy for Human Rights, the Mexican League for Human Rights, and the National Indigenous Congress. The Special Rapporteur also met with representatives of the business community.

8. The Special Rapporteur visited Mexico City, Chihuahua and Ciudad Juarez (both in the State of Chihuahua) and Tepic (in the State of Nayarit).

9. At the end of the Special Rapporteur's mission, a press conference was held to discuss the preliminary observations of the mission.

10. The Special Rapporteur would like to thank the Government of Mexico for its invitation to visit the country and for organizing and providing assistance during the mission. He also thanks all other institutions, including the NGOs, and individuals for their cooperation and assistance.

11. The Special Rapporteur would also like to thank the UNDP office in Mexico City for its valuable assistance during his mission.

I. GENERAL BACKGROUND

12. Mexico, with an estimated population of 102 million is a federal republic composed of 31 States and a Federal District (DF), namely Mexico City, where the Federal Government is located. From the 1920s until 2000, the same party, the Institutional Revolutionary Party (PRI), governed the federation. The presidential elections in July 2000, however, ended in a victory for the candidate of the National Action Party (PAN), Vicente Fox. The new administration took office on 1 December 2000.

13. In 1994, wide-ranging amendments to the Constitution were made allegedly to revamp the administration of justice and enhance the rule of law. It was in follow-up to the campaign manifesto by the then President, Ernesto Zedillo, to combat human rights violations, drug trafficking, the substantial increase in organized crime, political assassinations, murders of journalists, the Chiapas uprising and the emergence of widespread corruption. The amendments, totalling 27 were hurried through Congress within 10 days and were ratified by the requisite number of States within 7 days. It was reported that the amendments were made in conditions of extraordinary confidentiality, not even the then members of the judiciary being informed. The amendments inter alia brought about the dissolution of the Supreme Court and reduced the number of magistrates (*ministros*) of that court from 22 to 11. Life tenure for these magistrates was reduced to a 15-year non-renewable term. This dissolution of the highest court in Mexico, without transitional provisions for continuity, resulted in there being no Supreme Court between December 1994 and February 1995,which struck at the core of the rule of law in Mexico. Other amendments included the creation of the Council of the Federal Judicature (Judicial Council). By 1997, conflict between the Office of the Attorney-General and the Supreme Court surfaced. It was reported that the Office of the Attorney-General, faced with the total defeat in fighting crime, blamed the judiciary for the deterioration of the rule of law and the administration of justice in the country. Mutual public accusations between the executive and the judiciary ensued.

14. Since 1995, the Government has been involved in a violent conflict with the Zapatista National Liberation Army (EZLN), an indigenous guerrilla group. The conflict has been concentrated in the State of Chiapas. The new administration of President Fox has promised to settle the conflict. To this effect, it was agreed to release EZLN prisoners and to close seven military bases in Chiapas. A bill to recognize indigenous rights was put before Congress, based on a 1996 proposal of the Commission of Concordance and Peace which had the support of the indigenous community. However, amendments were made to this bill by the Senate and Congress which are seen by the indigenous communities as having seriously undermined the bill's guarantees. At the time of the Special Rapporteur's visit, the enactment of the bill was pending the approval of the majority of States. Since then, it has come into effect, after having been approved by 17 of the States, although the 14 States which rejected the bill are among those with the highest proportion of indigenous communities.

15. Mexico is a party to all the major United Nations human rights treaties, but is not a party to any of the optional protocols to the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child or the Convention on the Elimination of All Forms of Discrimination against Women. It is also a party to the American Convention on Human Rights and to ILO Convention 169 on Indigenous Peoples. It has submitted itself to the jurisdiction of the Inter-American Court of Human Rights.

16. Mexico has received visits from other special rapporteurs of the Commission on Human Rights: the Special Rapporteur on torture in August 1997, the Special Rapporteur on the sale of children in November 1997, the Special Rapporteur on toxic waste, in November 1998 and the Special Rapporteur on extrajudicial, summary or arbitrary executions in July 1999. Mexico has also received visits from the Chairperson of the Working Group on Indigenous Populations in January/February 2000 and the United Nations High Commissioner for Human Rights in

November 1999 and December 2000. During the visit of the High Commissioner in December 2000, an agreement on a technical cooperation programme was signed by the High Commissioner and President Fox. At the time of the Special Rapporteur's visit, this project was in the first phase of implementation.

II. THE CONSTITUTION AND THE ADMINISTRATION OF JUSTICE

17. The Constitution of the United States of Mexico dates from 1917. It has been amended on more than 130 occasions. It is one of the longest Constitutions the Special Rapporteur has seen. As mentioned earlier (see above, para. 13), major amendments concerning the administration of justice were made to it in December 1994. It was further amended in 1996 and 1999. The 1999 amendments led to transformations in the judicial systems in the States. The Special Rapporteur learnt that the Government has set up a committee to review the Constitution.

18. Chapter I of the Constitution provides for individual guarantees, including the right to a fair trial. Article 13 prohibits the trial of anyone by special courts. It also prohibits the trial of civilians before military courts.

19. Article 17 provides for independent and impartial courts to administer justice expeditiously and deliver judgements promptly. It also provides for the full execution of court judgements.

20. Article 49 provides for the separation of the legislative, executive and judicial powers.

21. Chapter IV of the Third Title of the Constitution concerns the judicial power. Article 94 provides that the federal judicial power is vested in the Supreme Court, the Electoral Tribunal, the collegiate tribunals, the unitary circuit courts and the district courts. Article 94 also provides that the administration, control and discipline of the federal judiciary, with the exception of the Supreme Court, is vested in the federal Judicial Council. It also establishes that the 11 Supreme Court magistrates (known as *ministros*) remain in their office for 15 years and cannot be reappointed.

22. Article 95 establishes the minimum requirements to become a Supreme Court *ministro*: Mexican by birth, 35 years of age, in possession of a law degree for the previous 10 years, of good character, having resided in the country for two years before taking up the post and not having been in a senior executive or legislative function for a year before the appointment. In appointing *ministros,* preference shall be given to those who have served the administration of justice with efficiency, capability and probity, or who have distinguished themselves by their honour, competence and professional career in the exercise of judicial power.

23. As for appointments of *ministros* of the Supreme Court, article 96 provides that the President of the Republic shall submit a shortlist to the Senate for its consideration. The Senate chooses from the list. The same article provides for the President to make appointments from the shortlist in the event that the Senate fails to make a choice within 30 days or if the Senate rejects the shortlist, and after the President submits another shortlist, which is also rejected.

24. Every four years, the *ministros* of the Supreme Court of Justice elect one of their number as the President of the Court, who shall not be re-elected for the next four-year period immediately following.

25. With regard to magistrates of the circuit courts and judges of the district courts, article 97 provides that they are nominated and appointed by the Council of the Federal Judicature (Judicial Council). They remain in office for six years, after which period, if they are confirmed in their office or promoted to higher office, they can only be removed in accordance with the provisions and procedure set out in Title IV of the Constitution. The procedure is akin to impeachment.

26. The salaries of the *ministros* of the Supreme Court, circuit courts and district courts cannot be reduced during their terms of office.

27. Article 99 of the Constitution provides that the Electoral Tribunal is the highest jurisdictional authority with regard to elections, and is a specialized organ within the judicial power of the Federation.

28. Article 100 governs the Judicial Council and regulates its membership as well as its functions.

29. Article 101 provides that members of the judiciary cannot accept any employment or assignment (whether public or private) other than unpaid positions in scientific, educational, literary or charitable associations. Those who have occupied the office of *ministro* of the Supreme Court, circuit magistrate, district judge or member of the Judicial Council, as well as of magistrate of the Superior Chamber of the Electoral Tribunal, may not, within two years of stepping down from office, act as lawyers or representatives in any hearing before the organs of the judiciary.

30. Pursuant to article 116 of the Constitution, the judicial power in the States is exercised by courts established by the respective State constitutions. The same article expressly provides that the independence of judges should be guaranteed under the State constitutions and the organic laws of the States. State constitutions are also required to provide for qualifications for judicial appointments to the High Court of Justice to be similar to qualifications for appointments to the Federal Supreme Court provided in article 95. First instance judges and judges of other courts created by State constitutions are appointed by the high court of justice of the State, or the State judicial council if there is one. Magistrates of the high courts of justice are appointed for a term provided in the respective constitutions and, once confirmed, cannot be removed save by the procedure provided under the respective State constitutions. There is no similar federal constitutional guarantee of security of tenure for first instance judges and those of other courts in the States.

31. Article 102 provides for the organization of the Public Prosecutor's Office, headed by the Attorney-General (*Procurador General*) appointed by the President subject to the approval of the Senate. Qualification for the office of *Procurador General* is similar to that for the office of a judge of the Supreme Court of Justice. Among the powers of the Public Prosecutor's Office is the prosecution of all federal crimes.

III. SUPREMACY OF INTERNATIONAL TREATIES

32. Article 133 of the Constitution provides that international treaties signed and ratified by Mexico shall prevail as the supreme law if they are in accord with the laws and the Constitution of Mexico. However, in 1999, the Supreme Court delivered a judgement to the effect that international treaties shall have primacy over domestic laws. This welcome judgement implies that even if provisions of international treaties are inconsistent with the Constitution or the domestic laws of Mexico the provisions of the treaties will have primacy.

IV. THE JUDICIARY

33. The federal judicial branch in Mexico is headed by the Supreme Court of Justice.

34. Judicial authority in the States is exercised through the courts established by their respective constitutions and reflects in general the same structure as the federal system. The highest court in the States is the High Court of Justice (*Tribunal Superior de Justicia*).

35. The State courts have jurisdiction over civil disputes and over most crimes committed in their territory. Federal courts have jurisdiction over specific categories of crime, such as drug or arms trafficking, and crimes committed against the Government or by federal civil servants, and can further be seized through amparo whenever individual guarantees are alleged to have been violated.

A. Courts, budget allocations and enforcement of judgements

1. At the federal level

36. Other than the Supreme Court, there are 131 collegiate tribunals, 54 unitary circuit courts and 201 district courts at the federal level. The courts are organized in 27 districts. The Judicial Council decides the number of first instance courts.

37. Before creating a new court, a social, economic and population survey is undertaken. The Special Rapporteur was told that the Judicial Council is envisaging creating 34 new courts in 2001 out of the 60 it deems necessary to reduce the existing backlog and to make the justice system more accessible.

38. The federal judiciary has grown substantially in recent years in order to cope with its growing caseload,[1] and in general its independence vis-à-vis the other powers appears to have increased. However, within the judiciary, the culture appears to be still very hierarchical and, despite efforts by the chief justice to make the judiciary more progressive, it is still very much a closed institution.

39. The budget for the federal judiciary (13 billion pesos in 2000) is about 1 per cent of the total federal budget. It is prepared by the Judicial Council, except for the budget of the Supreme Court, which is prepared by the Supreme Court itself (article 100 of the Constitution).

The salaries of the members of the federal judiciary range from 130,000 pesos a month for a Supreme Court *ministro*, to 90,000 pesos for a magistrate in a collegiate tribunal and 75,000 for district judges.

40. Allegations have been made that the federal judicial budget is not always utilized and that the unutilized portion is given to Supreme Court *ministros* as bonuses. Criticism has been expressed that the way the budget is expended is not made public and that there is insufficient accountability.

2. At the State level

41. The State judiciary is financed by the States and the salary for State judges is as a rule less than that at the federal level. Nevertheless, generally, budgets for State judiciaries have increased. For instance, the judicial budget of Chihuahua for 2000 increased by 29.72 per cent compared to 1999 and that of Nayarit by 14.72 per cent. Other States show similar trends (Tamaulipas even showed an increase of 158.51 per cent).[2] In most States, either the State judicial council, the high court of justice (TSJ) or its president prepare draft budgets for the judiciary. In a few States, however, the judiciary appears to have no influence over the budget at all. Most State judiciaries also receive funding from their auxiliary fund, which invests monies received from bail payments, fines and guarantees. In most States, the increased budget is used for higher wages, the construction or renovation of buildings or the creation of new courts.

42. Since 1995, State judiciaries also receive funds through agreements with the National Council of Public Security. Most judiciaries have been provided with funds to buy computer equipment and library materials and recently programmes have been developed to install video conference equipment in all TSJs in order to establish a communication network among the State judiciaries.

43. In 29 out of the 32 federal entities (States and the DF), the decision whether or not to establish new first instance courts is vested with the judiciary, either through the local judicial council or the TSJ. In three States, it is the legislature which decides on the number of first instance courts. In 14 of the 32 federal entities, the number of appeal courts is decided by the legislature.

44. The Special Rapporteur was told that geographical distance and the scarcity of the courts, be they federal or State courts, is for a large part of the population an obstacle to access to justice. There is an insufficient number of judges to respond to the public's need for justice.

45. A matter of some concern is the enforcement of court judgements. The Special Rapporteur was informed that, in many civil cases, court judgements remained unenforced owing to opposition of either the parties or social organizations. The judiciary does not have the power to enforce its judgements. It is dependent on the executive for enforcement of its orders.

B. The Judicial Council

46. The federal Judicial Council was created on 31 December 1994 and began work on 2 February 1995. The president of the Supreme Court is also president of the Judicial Council. Other members are: a magistrate from a collegiate tribunal, a magistrate from a unitary circuit court and a judge from a district court. Two more members are appointed by the Senate and one by the President of the Republic. The composition of the Judicial Council has been the subject of criticism as being influenced by the executive and legislative powers on the one hand, and for partiality, because the majority of its members are members of the judiciary, on the other hand. Its independence and credibility have also been questioned[3] and it has been suggested that the representatives of the judiciary in the Judicial Council are too dependent on the president of the Supreme Court, especially since the partial reform in 1999, following which the members of the Judicial Council are elected by the plenum of the Supreme Court (whereas before they were randomly selected). The Special Rapporteur was also informed that the president of the Supreme Court attends the Judicial Council as president of the Supreme Court and not in his personal capacity. Because of this, many issues are first discussed in the Supreme Court before being decided in the Judicial Council, which reinforces the impression that the Judicial Council is under the control of the Supreme Court.

47. The Judicial Council administers 30,000 personnel, including judges and magistrates and all court personnel, and has its own staff of 2,600. The Judicial Council functions through six commissions: administration; the judicial career; discipline; the creation of new organs; assignment; and vigilance, information and evaluation. Each commission consists of three members. Decisions of the Judicial Council are final, except for those concerning the appointment, assignment, ratification and removal of circuit magistrates and district judges, which can be appealed to the Supreme Court.

48. States have no constitutional obligation to have a judicial council. If no judicial council is established, the TSJ is in charge of appointments, discipline and administration.

C. Security of tenure

49. As was stated earlier, generally the Constitution provides for internationally recognized minimum standards of security of tenure for judges. The Federal Supreme Court *ministros* are appointed for a fixed 15-year non-renewable term. Court magistrates and district judges are appointed initially for six years and upon confirmation or promotion to a higher office they remain in office for life and cannot be removed save in accordance with the provisions of the Constitution or the basic law. Selection for appointments and evaluation for promotion are done through processes of examination.

50. At the level of the States, although the Federal Constitution provides that the State constitutions shall secure the tenure of magistrates of the high courts of justice, whereas the security of tenure of judges of the first instance courts and those of other courts in the States is left entirely up to the various State constitutions.

51. In the DF, magistrates of the TSJ are appointed for an initial period of six years with the concurrence of the Legislative Assembly. Thereafter, if they are confirmed, they remain in office for life and cannot be removed save in accordance with the Constitution or the basic law. First instance judges and justices of the peace are appointed by the Judicial Council for a period of six years and their appointments may be renewed for periods of six years thereafter.

52. In Chihuahua, there is no judicial council. Magistrates to the TSJ and the first instance judges are selected for appointment through examinations. They are initially appointed for a period of three years. If confirmed thereafter, they remain in office for life and cannot be removed save in accordance with the provisions of the constitution and the organic law.

53. In Nayarit, the magistrates of the TSJ are appointed for a 10-year non-renewable term with the concurrence of the State legislature. First instance judges are appointed by the Judicial Council through the process of examination. The Special Rapporteur received allegations that about three years ago some judges were appointed who were not licensed lawyers. The Judicial Council has since embarked on a programme to have all personnel in judicial functions obtain a proper licence or be dismissed.

54. The Special Rapporteur received allegations that in many States a judicial career is dependent on the executive. In many cases, the executive appoints the magistrates to the TSJ (in some States with the concurrence of the legislature and in others without such concurrence), who in turn appoint first instance judges, who in turn appoint their secretaries. Security of tenure in such instances is non-existent. In some States where appointments can be confirmed for life, there may be no confirmation. In such instances the judges are asked to resign and are appointed afresh. In this way, the confirmation of their appointment for life is avoided.

55. When States provide for the retirement of judges, the procedures are not well regulated. The retirement benefits are inadequate.

56. The Special Rapporteur also received information that in some cases the assignment or transfer of a judge to a particular post or district is at the discretion of the TSJ or the Judicial Council. There are no rules governing the exercise of this discretion. The judge concerned is not consulted.

D. Judicial training

57. The Institute of the Federal Judicature assists the Judicial Council with the training of the members of the federal judiciary. Candidate judges who have passed the initial examination are given seven months' training. Each year 50 candidate judges are trained, of whom on average 40 pass the final examination. In order to be promoted to the level of magistrate, a judge will have to follow another six months' training course.

58. The Institute also has 26 branches throughout the States in order to train federal judges in the interior. The Institute was entering into an agreement with some States in order to accommodate the training of State judges.

59. Concerns were expressed about the lack of familiarity of judges with norms of international law, in particular human rights law, and also their lack of knowledge of indigenous traditions and customs. The vast majority of judges at State level never apply international law or refer to international instruments. It has to be noted, however, that as a rule, the lawyers who appear before them do not invoke these instruments either. The Special Rapporteur was informed by the Institute that it offers a diploma course in constitutional rights, human rights and amparo to all members of the federal judiciary. At the first course, 100 judges participated in person and an additional 200 through video. The second course was followed in video programmes by 450 lower court officials.

60. In the DF, the Institute of Judicial Studies (which is part of the District's Judicial Council) is in charge of elaborating training programmes for judges. Most State judiciaries have their own training institute, which, generally has very limited resources. Most of them do not have systematic and continuous training programmes and often only provide introductory courses for lower-level personnel.

E. Judicial disciplinary procedures

61. Federal judge discipline is regulated by the Judicial Council. From 1995 to 1999 the Disciplinary Commission of the federal Judicial Council attended to 2,274 complaints, resulting in 327 sanctions of magistrates, judges or secretaries, ranging from warnings to dismissal (an average of seven sanctions per month). In the case of a complaint against a judge, the judge is informed and has an obligation to respond. The complainant and the respondent receive each other's submission and can respond to it. The Disciplinary Commission of the Judicial Council studies the submissions and makes a recommendation to the plenary of the Judicial Council. The Judicial Council's decision is appealable to the Supreme Court, on procedural matters only.

62. Each State judiciary has its own procedures for disciplining its members. In Nayarit, for instance, the Judicial Council is in charge of disciplinary procedures, which are similar to those at the federal level. In Chihuahua, on the other hand, it is the president of the TSJ who examines complaints against first instance judges, and the first instance judges examine complaints against judges handling minor matters and justices of the peace. Magistrates and judges also handle complaints against their auxiliary personnel. From disciplinary measures, appeal is possible to the plenum of the TSJ.

F. The incidence of judicial corruption and undue influence and pressure on judges

63. The Special Rapporteur was given estimates of 50 to 70 per cent of all judges at the federal level being corrupt. However, no federal judge has ever been sanctioned for corruption by the Judicial Council. Some have been dismissed for inexplicable error in their judgements, but the Special Rapporteur was told that corruption is hard to prove. According to some reports, corruption within the judiciary was spreading because of the influence of drug traffickers.

64. At the State level, the Special Rapporteur was informed that low salaries generate corruption. In civil matters, he was told that often no paper is processed if a bribe is not paid.

65. The Special Rapporteur also received allegations that most judges are influenced by the prosecutors' offices either because of their close working relationship (in some places they even share offices) or because of threats and intimidation. This complex situation is sometimes compounded by media pressure. Media reports urging that the alleged culprits of a crime be convicted and sentenced influence public opinion and become an additional pressure on the judge to convict against the weight of evidence and the law.

66. The Special Rapporteur learned of the practice of judges meeting with either the prosecutor or the defence lawyer in the judge's office, without the other party being present. Although these meetings are not formal and do not form part of the court procedure, the practice is fraught with suspicion and affects the perception of the judge as impartial, especially in Mexico where lack of public confidence in the justice system is rampant.

67. The Special Rapporteur received allegations that many State judiciaries were not perceived as independent. In this context, it has been noted, as stated earlier, that in many States the term of the magistrates of the TSJ is six years, coinciding with the term of the governor, who normally makes the recommendations for the appointments of these magistrates, to be approved by the State's legislature. In many States, the governor still (if only informally) appoints the president of the TSJ, who is mainly responsible for the political and administrative course of action of the judicial branch. It is said that, traditionally, the governor considers the judiciary as subordinate to him.

68. This situation has led to allegations of judicial partiality towards the authorities, and close links between the members of the TSJ and the executive are said to exist. In this context, the Special Rapporteur was informed of an incident in which the president of the TSJ in the State of Morelo obtained leave of absence in order to fulfil the functions of governor in the absence of the governor, only to return to his functions at the TSJ upon the return of the governor.

69. Since 1995, in many States legal reforms have taken place in order to introduce more democratic ways of appointing magistrates. However, there still exists close cooperation between the judiciary and the executive in some States, leading to situations of dependency. Such is the case with the public prosecutors in penal matters and with the executive in general for the enforcement of court judgements.

70. In his meetings with magistrates and judges in Tepic, the Special Rapporteur was informed that the judiciary was embarking on a programme towards more transparency. For this purpose, it has regular consultations with civil society. It had also examined possible improvements in order to expedite procedures.

71. In November 2001, the Special Rapporteur learned that Benito Andrade Ibarra and Jesus Alberto Ayala, two federal judges in the State of Sinaloa, had been killed by gunmen in Mazatlan. This act of violence was said to be related to the drug trade. The governor of Sinaloa ordered police protection for all federal judges in the State.

72. Following the killings, the president of the Supreme Court was reported to have requested security for 18 federal magistrates throughout the country as well as for 10 district judges in the State of Sinaloa. The Federal Government pledged to guarantee the security of the judges.

F. The relations between State and federal judiciary

73. As stated earlier, Mexico being a federation, each State and the DF have their own judicial power. Most people's first contact with the judiciary is at the State level.

74. There are frustrations among the State judiciaries over lack of appreciation, resources and autonomy. Judges complain that they do their utmost to decide cases within the time frame set by the law, but that when an amparo application is filed before the federal courts, the determination of the case is unduly prolonged. In some cases, the federal tribunals are said to have misinterpreted the State legislation. Moreover, the amparo procedure creates the impression that the decisions of the State courts are not final, thereby in effect turning the Mexican judiciary into a centralized one, despite its federal structure. This also hinders the development of State jurisprudence, since the criteria applied by the State judiciary can at any time be overturned by the federal tribunals. In 1999, the members of the National Commission of TSJs of Mexico published the so-called Yucatán Declaration, in which they called for the establishment of State cassation courts in order to replace the direct amparos, leaving the federal courts to deal with challenges to the constitutionality of legislation. In 2000, they issued the Acapulco Declaration, in which they called for providing State courts with the exclusive jurisdiction to decide in last instance all matters within the State.

75. In response to these criticisms on the part of the States, the federal authorities tend to avoid the issue or assert that they are State problems and not a federal concern. The Special Rapporteur wishes to stress that it is the obligation of Mexico to provide justice at every level, beginning with the State courts.

G. The electoral tribunal

76. The Special Rapporteur was informed about difficulties encountered in enforcing the judgements of the Federal Electoral Tribunal, notably in the States of Yucatan and Tabasco. In Yucatan, elections for governor were scheduled for 27 May 2001, but on 12 October 2000, the Electoral Tribunal of the Federal Judicial Power (TEPJF) declared the composition of the State electoral council (which organizes the elections) invalid because supporters of the governing party, the Institutional Revolutionary Party (PRI) had been unlawfully over-represented on it. The TEPFJ designated new electoral councillors, but the State government refused to recognize this new council and prevented it from using the office building, despite specific orders by the TEPFJ. Only after a Supreme Court ruling, was access granted to the office on 8 April, less than two months before the elections.

77. Similar difficulties were encountered in Tabasco, where, on 29 December 2000, the TEPFJ annulled the elections for governor for having been marred by irregularities. The Tribunal ruled that an interim governor should be appointed and that new elections for

governor should be held within three to six months. However, the Tabasco Congress extended the interim governor's term to 18 months. On 8 March 2001, the Supreme Court ruled that the Tabasco Congress decision was unlawful. The Congress then decided to have elections on 5 August 2001, past the deadline set by the TEPFJ, and that the governor would not take office until 1 January 2002. The Special Rapporteur is concerned at the lack of respect by State governments for the rulings of the TEPFJ.

V. MILITARY COURTS

78. Military tribunals are part of the executive and come under the responsibility of the Minister of Defence. Military tribunals have jurisdiction to try military personnel for breaches of the military code and for common crimes committed during service. In case of concurrent jurisdiction with civil tribunals, the military are judged by a military tribunal (*Codigo de Justicia Militar*, art. 57). Military judges (with the rank of brigadier general) are appointed by the Minister of Defence. They must have a law degree and have had a minimum of five years' practice within the military legal system (as assistants to judges or in the prosecutor's department). They are full-time judges. The Supreme Military Tribunal consists of five generals, four of whom are lawyers. All decisions and judgements by military tribunals can be subject to amparo proceedings before the civil federal judiciary. Civil lawyers can appear before the military courts in order to defend accused persons or assist interested parties, but in practice it is difficult to gain access to the documents and to have private meetings with the accused when they are in custody. The Special Rapporteur also noted reports that the victims of human rights violations committed by the military are excluded from participation in the proceedings.

79. The Special Rapporteur received complaints that military tribunals are not impartial, that they do not tolerate criticism by military officers of the army's methods, and that they are too lenient towards military officers who have violated the rights of civilians. In this context, the case of Brigadier General Gallardo was brought to the Special Rapporteur's attention. Brigadier General Gallardo has faced various charges, including embezzlement and dishonouring the military, since 1983. He claims that these charges were made up in order to discredit him since he was an outspoken critic of the military authorities. One of the charges, which was later dropped following a successful amparo application, related to a publication from his hand in which he had called for the creation of a military ombudsman. In 1996, the Inter-American Commission on Human Rights (IACHR) found that the chain of continuing multiple preliminary inquiries against Brigadier General Gallardo constituted a violation of his rights, and called for his release. He was not released, however, and in 1998 he was sentenced to 24 years' imprisonment after having been found guilty of several corruption-related charges. The Military Prosecutor General stressed that the recommendation by the IACHR had been premature because all domestic remedies had not yet been exhausted.

80. The Special Rapporteur also received complaints that civilians are sometimes called to appear before military tribunals. The Military Prosecutor General explained, however, that civilians are never tried by military courts and that they are only called as witnesses in order to testify. It appears that because of witnesses' unwillingness to cooperate with the military, many cases against members of the military who are accused of having violated the rights of civilians are dropped.

81. The Special Rapporteur noted that the Military Justice Code has not been fundamentally revised since it was enacted in 1934, although some amendments have been made to it in the course of time.

VI. THE PUBLIC PROSECUTOR'S OFFICE AND THE ATTORNEY-GENERAL

82. The Special Rapporteur was informed that since the constitutional reforms of 1993, the Public Prosecutor's Office has wider powers to detain persons without an arrest warrant, not only in cases where they are caught *in flagrante delicto*, but also in urgent cases, when there is a fear that the person will flee justice.[4] There have been allegations of arbitrary arrests in this respect. A suspect can be detained for 48 hours before being brought before a judicial officer (96 hours in the case of organized crime). It has been alleged that detention provisions facilitate the fabrication of evidence, in particular through forcing an arbitrarily arrested person to confess, and that detainees are sometimes subjected to torture.

83. In this context, the IACHR has stated: "Reports of illegal detention are a common occurrence in Mexico and directly involve agents of the country's various police forces: federal or State judicial police, preventive police, etc. However, the most delicate aspect of the problem is that this type of human rights violation often marks the beginning of a chain of violations of other rights, which generally includes the right to personal integrity and legal guarantees. The relationship between illegal detention and the violation of an individual's personal integrity and legal rights is not a function of circumstance. Rather, it is the logical consequence of the relationship of dependency that is often found between the administrative and judicial authorities."[5]

84. The statement made before an officer of the Prosecutor's Office after the initial detention (the *declaración ministerial*) is of major importance, because at the preliminary hearing this will be the main evidence. This encourages the use of force to obtain a statement from a suspect. According to the law, a statement is only valid if made in the presence of a lawyer. In practice, however, lawyers often sign the statement after it has been made, without having been present.

85. The Special Rapporteur was informed that the National Human Rights Commission is investigating a number of reports of torture. All interlocutors appeared to agree, however, that the number of incidents of torture has declined. Nevertheless, they expressed serious concern that the perpetrators of torture usually go unpunished. In this context, the Special Rapporteur notes that only the Public Prosecutor's Office has the power to initiate criminal proceedings, and judicial control over its actions is practically non-existent. The Special Rapporteur was told that this enhances impunity for acts of torture, since the victim has to report the crime of torture to the same institution whose members committed the crime, and if the Public Prosecutor's Office declines to prosecute, the victim is left without recourse. Although article 21 of the Constitution provides for appeal to the courts against the failure to prosecute, this constitutional provision has not been followed up with implementing legislation. It would appear that the few prosecutions for torture that have occurred have been in response to recommendations from the CNDH. The Special Rapporteur was informed of several cases where no investigation had been commenced into claims of detainees that they had been tortured.

86. The Public Prosecutor's Office appears to be aware of some shortcomings, especially with regard to delays in the investigation of crimes and the execution of arrest warrants, and has embarked on an operation to reduce the backlog. This programme includes professionalization and training of prosecutors and police. The programme of professionalization has also led to dismissals of officers who did not comply with professional requirements and standards. It also aims at raising salaries. Recruitment of personnel is by way of examinations. Continuous training, such as master's degrees in victimology and criminal law, is being offered through the Penal Science Institute. An anti-corruption programme is being implemented. Across the country, 6,800 committees have been set up to enhance citizens' participation.

87. In its programme of work for the period 2001-2006, the Office of the Attorney-General is projecting to provide obligatory courses in human rights law to all its personnel. It also intends to develop guidelines and manuals for its personnel expressly based on Mexico's international human rights obligations.

88. Amendments in 2000 to article 20 of the Constitution provide for the right of victims to appoint a lawyer to assist the Public Prosecutor's Office with the investigation and trial, and to adduce evidence. The Special Rapporteur was informed that in many cases, the Public Prosecutor's Office is reluctant to accept such assistance and fails to cooperate, despite instructions issued by the Attorney-General on 30 March 2001.

89. The Special Rapporteur was also told about efforts in the FD to professionalize the judicial police and the Office of the Government Procurator. Since 1998, newly recruited personnel are trained in investigation techniques, ethics and human rights. After training, they receive a salary of 9,000 pesos a month. The newly trained police account for 35 per cent of all the police force. According to the Procurator General, the impunity that still exists in the DF is not for want of political will, but is due to the difficulty of combating crime in a city of 8 million people, compounded often by witnesses being unwilling to come forward to testify. Ninety per cent of the cases presented to the courts lead to conviction. The Office of the Government Procurator is also trying to be more oriented towards the public: it has 70 offices that serve the public and periodic surveys are undertaken among those who contact the Office to study the public's perception of the efficiency of the Office. While it acknowledged the inefficiency of many of its personnel, he pointed out that any change must be gradual and could not be made overnight.

90. In Nayarit, the Procurator General told the Special Rapporteur of efforts to professionalize the work of his office by having prosecutors specialize in certain types of crime. The Special Rapporteur was also told that no complaints of torture had been received and that whatever torture might have occurred, it was all in the past. Previous records, however, did not appear to exist. The Procurator General denied any knowledge of incidents where evidence was fabricated and pointed out that when a citizen made a complaint it would be seriously attended to and that the office was regaining the confidence of the people. In his meeting with the CEDH, however, the Special Rapporteur was informed that the Commission had made three recommendations to the Procurator General in 2000 regarding torture and that in one case a policeman was sanctioned. Other serious flaws with regard to investigations were said to persist as well.

91. The deployment of officers of the federal Public Prosecutor's Office (including federal judicial police) in the States leaves much to be desired. The Special Rapporteur was informed that the federal Public Prosecutor's Office deploys only 60 officers for the whole territory of Chihuahua and that in practice they only cover the two main cities, namely Chihuahua and Cuidad Juarez.

VII. PUBLIC DEFENDERS

92. The Special Rapporteur was informed that many public defenders, especially those at State level, are not properly trained, have low salaries and do not enjoy proper conditions in order to work effectively. They often do not have an office of their own, but share one with prosecutors. Their workload is very high. Some of them are said to ask the accused for additional money in order to represent them better. Concerns were expressed that the public defenders often do not properly represent the accused, but just sign the documents, sometimes even without having been present when the accused made the statement.

93. At the federal level, public defenders are in the employment of the Institute of Public Defence, whose director is appointed by the Judicial Council for a term of three years (renewable). The Institute is financed by the federal Judicial Council, but enjoys technical and operational independence. The federal Law on Public Defence prescribes that public defenders must be in possession of a law degree, have a minimum of three years' experience and have successfully passed entrance examinations. Public defenders are full-time civil servants and are not allowed to take up any other post or practice. The salary for a federal public defender is 30,000 pesos a month. At the time of the Special Rapporteur's visit, there were 467 federal public defenders, spread out over 160 towns in Mexico. Public defenders are assigned to an agency or court, in which they are permanently present to attend to defence needs. The Special Rapporteur was told that there is at least one public defender for each court or agency. The Institute was in the process of reviewing workloads in order to give better support where necessary. The Institute also employs 103 legal advisers in 54 cities. Legal advisors provide assistance to people in the lower-income group on civil, administrative and fiscal law. It was reported that in its first five years of existence (1995-1999), 338,133 persons were assisted. The estimated figures for 2001 were 132,500 cases for public defenders and 10,850 for legal advisers. Twenty-eight supervisors visit each of the defenders and advisers twice a year to evaluate the quality of service. The Special Rapporteur was informed that over the past two years, 86 complaints had been filed against public defenders, of which 10 were considered justified and resulted in disciplinary sanctions, including one dismissal.

94. The Institute also has a programme to provide security for bail (up to 10,000 pesos) for those charged with not serious crimes and first offenders.

95. In many of the States, the public defenders are employed by the executive. Their salaries are generally lower than at the federal level. In Nayarit, the public defenders' office forms part of the Procurator General's office and shares the same building, with the detention cells. The Special Rapporteur was told by the Procurator General that this has made the defenders' work more effective since they are present when someone is arrested. Public defenders in Chihuahua on the other hand are employed by the judiciary and earn 16,000 pesos a month in the cities and

less in the countryside. There is one public defender per court. The Special Rapporteur received complaints that in civil cases (such as family matters or conflicts with water, gas and telephone companies) most people have no access to the courts for lack of funds and it was suggested that a public defender for civil matters should be created.

96. In the DF, the public defenders are employed by the Judicial Council and earn around 9,400 pesos a month. The Special Rapporteur was informed that the majority of the 600 public defenders in the DF were not in possession of a proper licence to work as a lawyer, despite the legal requirements. He was informed that a consultative council had been established in order to improve the image of the public defender and to set up a training programme. Other programmes being undertaken aim at improving conditions in the workplace and salaries.

97. The low quality of the defence provided by public defenders is a subject of concern. In this context, the Special Rapporteur notes that the courts in Mexico do not admit amparo applications on grounds of defective defence. The courts' concern is to verify whether an accused person is represented, not to review the quality of that representation. There have been reports of public defenders who were not qualified lawyers defending persons charged with serious crimes.

VIII. THE LEGAL PROFESSION

98. There are more than 40,000 lawyers in Mexico. The Special Rapporteur learned that there was neither organized uniform legal education for qualification to practise nor an organized legal profession in Mexico. Membership of the Bar is not obligatory, and the present Bar associations, of which several exist in each State, are voluntary associations.

99. The Bar Association of Mexico City (*Colegio de Abogados)* is the largest Bar association in Mexico with a membership of 2,000. In his discussion with the president of the Association the Special Rapporteur, learned that, among other things, the Association organizes continuing legal education, not only for lawyers but also for judges in specialized areas and prosecutors. He was also informed that the Association is working with the Ministry of Education to review university programmes. The president admitted that while there are five good law schools, there are many bad ones. He also admitted that the legal profession in Mexico might be one of the worst in the world insofar as disciplinary procedures were concerned.

100. Federal or State legislation concerning qualification to practise and the organization of the legal profession is non-existent. In his interviews with some Bar associations, including the Bar Association of Mexico City, the Special Rapporteur was told that these associations themselves would be supportive of an organized profession and of making membership of a professional organization mandatory, so long as the independence of the profession was not impeded.

101. The law degree at universities is not standardized and most interlocutors agreed that the standards were mediocre. Government control over law schools is said to be basically non-existent. Most law schools offer a 5-year curriculum, but the Special Rapporteur was also

told that some State universities offer a law degree in three years. Human rights and public international law are not part of the normal curriculum. Once students graduate, they become assistant lawyers (*pasantes)* until they have passed the professional examination. They can then begin to practise, as soon as they have registered with the Ministry of Education.

102. There is no code of ethics for lawyers. The various Bar associations have their own codes of ethics, breach of which may lead to expulsion of the member from the Bar association. But that does not preclude the lawyer from continuing to practise. The only way to stop a lawyer from practising is through the Ministry of Education, which can revoke the licence, a complicated procedure which is never implemented. The Special Rapporteur received many allegations that the majority of undergraduates never complete their course, but nevertheless practise and even appear in court, often using the credentials of another lawyer who is properly licensed.

103. Generally, the low quality of the legal profession negatively affects the quality of the administration of justice. In this connection, it is noteworthy that most judges whom the Rapporteur met during his visit expressed dissatisfaction with the quality of the lawyers' performance. As judges are generally appointed from the ranks of the profession, the quality of the judiciary too is adversely affected. However, there are a few lawyers of calibre and eminence with lucrative practices in Mexico City.

A. Harassment of lawyers

104. The Special Rapporteur was informed that often lawyers are denied access to accused persons in police detention, on the pretext that authorization by the judge is needed. Such authorization is often impossible to obtain in practice.

105. The Special Rapporteur was also informed that, whenever a lawyer presents himself at a maximum security prison to visit his client for the first time, he is made to wait for an average of three hours. The prison officials do not allow the lawyer to hand documents directly to the accused, insisting that the documents should be delivered through the prison's service attendants. The Special Rapporteur received allegations that, on those occasions, photocopies may be made of the documents. The Special Rapporteur was also told that lawyers are not allowed to bring in their notes directly and that these are only later brought to them by prison personnel once the lawyers are inside the prison. In this context, allegations were also made that the notes are routinely being photocopied by prison personnel before being returned to the lawyers when they leave the prison. Moreover, lawyers claim that their conversations with their clients are listened to or taped.

106. The Special Rapporteur received several reports about harassment and intimidation of individual lawyers. It was reported that one lawyer, Pilar Noriega, had not only been subjected to the restrictions described above when visiting clients, but had also been strip searched before being allowed to enter a prison. Although she presented her case to the IACHR, the Special Rapporteur was informed that this type of harassment has still not completely stopped.

107. The Special Rapporteur was informed that lawyers from the Centre of Indigenous Rights and Culture received death threats after they filed a criminal complaint concerning the unlawful arrest of seven indigenous person in Oaxaca in April 2000. To protect their security, they had to recur to the IACHR for measures of protection.

108. Other harassment occurs in relation to drug, arms and political matters. The Special Rapporteur heard reports that the executive puts pressure on lawyers defending drug traffickers and begins investigating the lawyers to link them to their clients' alleged criminal activities.

109. On 19 October 2001, Digna Ochoa y Placido, a prominent human rights lawyer, was found dead from gunshot wounds in the legal office where she worked. Ms. Ochoa's murder came after years of harassment and a series of death threats since 1995. In October 1999, unknown persons entered her home and subjected her to a nine hour interrogation. They tied her to a chair, opened a gas canister and left her to die, but she managed to free herself. On 17 November 1999, the IACHR directed the Government of Mexico to take urgent measures to protect Ms. Ochoa and ordered an efficient and expeditious investigation. Though Ms. Ochoa was provided police protection for a period of time, the protection was discontinued in July 2000, when she left Mexico for a few months. It was not reinstated upon her return. It should be emphasized that the most effective measure to protect Ms. Ochoa would have been an investigation into the threats and the apprehension of those responsible, which has not, as of yet, been done. The Special Rapporteur is seriously concerned about information that the Office of the Attorney-General ordered the closing of the investigation into the threats against Ms. Ochoa in May 2001.

110. Following the murder of Ms. Ochoa, fears were expressed for the security of other human rights lawyers, in particular Ms. Pilar Noriega, who worked with Ms. Ochoa in defending indigenous persons accused of being Zapatistas. Like Ms. Ochoa, Ms. Noriega has received death threats on several occasions in the past, and the origin of the threats has never been clarified.

111. In November 2001, another lawyer Sylvia Raquenel Villanueva, survived an attack by gunmen while leaving a courthouse. It was said that it was the fourth attack against her life in three years. The shootings were thought to be related to her defence of a drug dealer turned police informer.

B. Legal Aid

112. Save for the provision of public defenders (see above, chap. VII), there are no federal or State run legal aid schemes in Mexico. In the Special Rapporteur's meeting with the Bar Association of Mexico City (*Colegio de Abogados*) the president of the Association acknowledged the serious problems of access to justice faced by the people and said that, two years previously the Association had embarked on a free legal aid programme.

IX. HUMAN RIGHTS DEFENDERS

113. The harassment of human rights defenders is a continuous problem in Mexico. In Chiapas, Guerrero and Oaxaca especially, they live in constant insecurity. The Special Rapporteur received numerous reports about past and present harassment, including death threats, kidnappings, intimidation, telephone tapping, unknown persons following human rights defenders and being posted outside their houses or offices, stealing of documents, fabricated criminal charges, unlawful detentions, physical aggression, murder attempts and defamation. The authorities, local politicians, armed groups and other organizations, usually with some backing from the authorities, are said to be responsible for the harassment.[6] There appears to be complete impunity for these acts.

114. How serious the problem is, is shown by the killing of human rights lawyer Digna Ochoa on 19 October 2001 (see above, para. 109). A letter found with the body threatened members of the human rights centre PRODH, with whom Ms. Ochoa had worked in the past. These are not the first threats against PRODH. In August 1995, the director of PRODH, Father David Fernández, received death threats by telephone, and later that year defamatory documents were circulated against him. On 5 January 1996, two members of PRODH were assaulted by two men who were later identified as judicial policemen. In September 1999, several written death threats were received at the PRODH office on three different days. In October 1999, the PRODH office was broken into and ransacked. The security video system had been rendered out of order. On 17 November 1999, the IACHR directed the Government of Mexico to take urgent measures to protect the life and security of the members of PRODH. It also called for an efficient and expeditious investigation. On 31 January 2000, more written death threats were found at the PRODH office. Although, following the call by the Inter-American Court for measures of protection, some security was provided to PRODH, this was discontinued in July 2001. The investigations into the threats never led to anyone being apprehended. The Special Rapporteur was informed that the offices of PRODH are now provided with police protection.

115. On 27 October 2001, a week after the murder of Digna Ochoa, a letter was found containing death threats against five human rights defenders: Miguel Sarre (Committee for the Humanization of Incriminatory Practices), Sergio Aguayo (Mexican Human Rights Academy), Edgar Cortez (PRODH), Juan Antonio Vega (National Human Rights Network, "All Rights for All"), and Fernando Ruiz (Law and Human Rights Council). The anonymous writer of the letter demanded that President Fox deliver six million pesos for each of the individuals and claimed responsibility for the murder of Digna Ochoa. The Government has offered police protection to the five human rights defenders threatened.

116. Other attacks on human rights defenders during President Fox's administration include breaking in and setting fire to the home of members of the "Fray Pedro Lorenzo de la Nada" Human Rights Centre in Chiapas; the attempt to hit another member of the same Centre with a car; and death threats to Abel Barrera Hernández, director of the "Tlachinollan" Human Rights Centre of the Mountain, in Guerrero.

X. IMPUNITY

117. Concerns were expressed about impunity for human rights violations and crimes committed by the military. The Special Rapporteur was informed that, as a rule, the military, and not the Public Prosecutor's Office, investigates these cases. Many perceive the military tribunals as not being independent and impartial. Concerns have been expressed that leaving the prosecution of common crimes committed by members of the military in the hands of the military impacts negatively on the right to justice.[7]

118. In this context, the Special Rapporteur learned that the military are regularly called upon to assist the civil authorities. This has led to an increase in allegations of human rights violations. The Special Rapporteur's attention was drawn to the mixed operation bases (*bases de operaciones mixtos*), which integrate members of the military, State public security agents, federal and State judicial police and the migration police.

119. In general, there is a perception of a high-level of impunity (95 per cent) for all types of crimes. Many crimes are never reported, many arrest warrants are never executed. Part of the problem is also the lack of efficiency of the criminal investigations, with reports indicating that as little as 10 per cent of all criminal files opened lead to charges being made. The level of impunity and corruption in Mexico is a wide societal problem brought on by a political system controlled for nearly a century by a single party that did not need to account for its acts. The situation has been aggravated by the expanding drug trafficking.

120. At his meeting with the Attorney-General, the Special Rapporteur was informed that impunity was of great concern to his office. He said that as many as 55,000 arrest warrants were not pursued. He also said that the police had no longer any credibility in society.

121. On corruption, the Attorney-General said that the high level of corruption was serious. Public servants used their office for self enrichment and detection was complex. He admitted that the Mexican public had high expectations for justice. Resources were barely enough for effective work. There was still a long way to go.

122. At one of the interdepartmental meetings, in response to the Special Rapporteur's observation that the high level of impunity had driven the public to lose confidence in the administration of justice, one interlocutor said "not that the people have lost confidence, they have never had confidence".

123. In November 2001, the CNDH published a report about forced disappearances. It confirmed that State agents caused the disappearance of at least 275 people from 1975 to 1985 (see below, para. 127).

124. The Special Rapporteur was informed of efforts initiated by the Government to combat corruption more effectively through the newly established Inter-ministerial Committee on Transparency and Fighting Corruption, which designed a national programme with the objectives of preventing and eliminating corrupt practices by enhancing transparency; making the federal public administration more effective and efficient; raising salaries and conducting

training courses; identifying corruption-sensitive areas in public administration and detecting corruption practices by means of undercover agents; establishing a corruption case detection and sanctions programme; encouraging civil society to make government accountable for its actions and to demand quality and transparent services; and facilitating the making of complaints. The Committee is also considering developing corruption and impunity indices in cooperation with Transparency International and the Technological Institute of Monterrey, in order to evaluate the level of corruption in each State of the Federation. On 26 February 2001, the Government concluded an agreement of cooperation with 83 social organizations, businesses, political parties and academic institutions, in order to fight against corruption.

XI. NATIONAL AND STATE HUMAN RIGHTS COMMISSIONS

125. By presidential decree of 6 June 1990, a National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) was established. The Commission was entrenched as a constitutional institution in January 1992. Through the National Human Rights Commission Organization Act (*Ley de la Comisión Nacional de los Derechos Humanos*), its legal status was restructured so as to reaffirm its ombudsman-like character and to strengthen its autonomy. Since 1999, it is the Senate (or during recess, the permanent commission of the Congress) and not the President which appoints the president and the 10 members of the Commission. They are elected for a term of five years, renewable once. The Commission can receive complaints against acts or omissions of an administrative nature by any public authority or servant, with the exception of the judiciary. Labour and election related matters are likewise excluded from the Commission's jurisdiction. The Commission also has the task of promoting human rights through education, campaigning and training and has played an important role in this respect. For indigenous prisoners, the CNDH has a special programme that seeks to obtain their early release.

126. Within its mandate to protect human rights, the CNDH has the power to compel officials to grant access to prisons, detention centres etc., and to give evidence, but its recommendations are non-binding on the authorities. Most cases are closed after a settlement is effected, a practice that has been criticized for apparent lack of balance, as often the complainant is not consulted beforehand. Of the 3,428 complaints the CNDH processed in 2001, as of 31 October 2001, 2,717 were concluded and 24 recommendations were issued.

127. In November 2001, the CNDH published a special report on complaints regarding enforced disappearances which occurred in the 1970s and the beginning of the 1980s. In this voluminous report, the Commission presents its findings in 532 reported cases of enforced disappearance. It records direct government responsibility in 275 cases and states that there are indications of such responsibility in 97 more cases. It does not exclude government responsibility in the remaining 160 cases. In the report, it is stated that 74 government officials have been identified as suspects in connection with the disappearances. Following the presentation of the report, President Fox decreed that a special prosecutor should be appointed to investigate the disappearances and to bring criminal charges against the perpetrators. The CNDH has said that it will hand over its data to the special prosecutor.

128. The majority of the Commission's recommendations have not been fully implemented by the authorities and the general perception in society is that the Commission's position is weak as it does not have sufficient influence to make the authorities comply with its recommendations. An example was a case when the CNDH recommended to the authorities that they should give protection to a person who had complained about corruption and drug links. The authorities failed to comply. The complainant was subsequently found murdered. The Commission has also been criticized for delays in investigation, lack of adequate investigation methods and unwillingness to investigate human rights violations when the military authorities are involved. Concerns have been expressed that on some occasions confidential files are handed over to the authorities.

129. State human rights commissions were also set up and have the same mandate as the national commission, but relating to the State authorities. Many State human rights commissions are perceived as being too dependent on the executive. There have also been reports of officials of State human rights commissions being harassed by the authorities, especially through criminal investigations.

130. At the State level, the rate of compliance with recommendations is in general lower than at the federal level. During his meeting with the director of the State human rights commission in Chihuahua, the Special Rapporteur was informed that non-compliance with the commission's recommendations was 48 per cent in 2000. In Nayarit, the president of the human rights commission reported that of the eight recommendations made in the year 2000, only two had been complied with. On the other hand, the human rights commission of the Federal District, reported the rate of compliance at 80 per cent of the 12 recommendations issued in 2000.

131. The CNDH has the competence to hear complaints about procedural irregularities by State human rights commissions and can hear appeals against any final decisions of the State human rights commissions, including their recommendations if they do not provide sufficient reparation. It can also be apprised of complaints about non-compliance by the State authorities with recommendations issued by a State human rights commission. Moreover, the CNDH can take a case away from a State commission in order to examine it itself, when the matter is of national importance (article 60 of the National Human Rights Commission Organization Act). This happened for instance in the case of the lack of investigation into the murders of women in Ciudad Juarez (see below, para. 161).

XII. OTHER ISSUES

A. Fair trial guarantees in practice

132. The Mexican legal system is based on the Spanish civil law model. The proceedings are largely written and oral hearings are limited. At the time a case is brought before a judge for trial, the Public Prosecutor's Office usually presents the judge with evidence it has obtained through its investigation and the judge is not required to hear witnesses or take new evidence if the parties do not ask for it. This practice implies that the judge convicts the accused based on the investigation report of the Public Prosecutor's Office. Figures show that the Public Prosecutor's Office obtains a conviction rate of 95 per cent in cases it brings before the courts.[8]

133. The Special Rapporteur was informed that in the vast majority of cases, owing to the excessive workload of the judge, proceedings are conducted without the actual presence of the judge on the basis of article 76 of the Code of Criminal Procedure, which enables a judge to delegate the continuation of a hearing to the secretary if his or her presence is not indispensable. The secretary takes down the depositions of witnesses, as well as the declarations made by the parties. The judge later bases his judgement on these notes. In this context, the Special Rapporteur also notes figures indicating that in 44 per cent of the penal courts the judge cannot oversee the court from his office, resulting in a lack of control over the proceedings.[9]

134. Despite the constitutional guarantee that hearings are public, the Special Rapporteur was told that in practice the public cannot gain access to the hearings because of the way the courthouse is organized. The public has to stay behind a barrier, whereas several hearings are conducted simultaneously at different desks. The Special Rapporteur was also told that, when the accused is in detention, he stays behind a grill next to the desks of the court officers, making confidential conversation with his legal representative impossible. In many hearings, the accused is not even present. In this context, the Special Rapporteur learned that when accused persons are held in the federal maximum security prisons (*Centros Federales de Readaptación Social*) they are not transferred to the courthouse, and the judge goes to the prison in order to hear the accused. Access to a hearing in prison is said to be almost impossible for the public, including the family of the accused, because the prison administration, not the court, has control over access to the prison. The judge has no control over the venue of the hearing.

135. The Special Rapporteur was informed that the courts usually accept the first statement of an accused person, if it was made to the Procurator General's office in the presence of a lawyer, even if the accused person later retracts it because of having been forced to make it. The Special Rapporteur also learned that often this statement is the main ground for conviction.

136. In this connection, the Special Rapporteur was informed of the case of Rodolfo Montiel Flores and Teodoro Cabrera García, two environmental activists, who were arrested by the military in May 1999 and forced to sign blank pieces of paper which were later presented in court as confessions to drugs and firearms crimes. In July 2000, the CNDH confirmed that the two men had been victims of torture and recommended that the case should be investigated. No progress on the investigation has been reported and, on 28 August 2000, the two men were sentenced to long prison terms, despite the allegation that their confession was extracted under torture. Their appeal was dismissed in October 2000. On 9 May 2001, the two men were granted amparo because of the appellate court's failure to consider as evidence a medical report confirming that they had been tortured. The appellate court was ordered to admit the report as evidence and take it into account when issuing a new judgement on appeal. Nevertheless, on 16 July 2001, the appellate court again confirmed the conviction, despite a document issued by the Ministry of Foreign Affairs that certified the integrity and credibility of the international experts who had drawn up the medical report. In November 2001, President Fox ordered the release of the two men, for humanitarian reasons.

137. The Special Rapporteur was also informed of the case of the so-called Loxicha prisoners, 144 indigenous persons who had been arbitrarily detained by the military in August 1996, and forced by means of torture to sign blank sheets of papers. By the time of the Special Rapporteur's visit, 110 of them had been released - half of them under an amnesty law

of 8 December 2000, after having been convicted, and the others by order of the court. Some of the 34 still in prison have been convicted on the basis of confessions made under torture. To the Special Rapporteur's knowledge, no one has been brought to justice in connection with the torture.

138. The problem of using forced confessions in order to convict accused persons, is also illustrated by the case of Mr. Manuel Manriquez, who was released in March 1999 after nearly nine years' imprisonment. He had been convicted of murder in 1991, despite the fact that he had been tortured into making a confession and the confession was the only evidence against him. On appeal, the court recognized that torture had occurred, but still accepted the confession as valid evidence, considering that the fact that Mr. Manriquez had been tortured did not alter his criminal responsibility, thereby in fact placing the burden on the accused to prove that he was innocent. Mr. Manriquez was finally released after a recommendation by the IACHR.

139. The Special Rapporteur was informed that there are serious delays in trials, because of the workload of the courts. Although the Constitution sets fixed time limits within which a case must be heard and disposed of by the court in penal matters (four months in case of offences carrying a maximum sentence of two years' imprisonment, and one year for others), these terms are frequently surpassed. The Constitution only allows extension of the time limits at the request of the defence. In practice, without such a request, many cases take longer. The only recourse an accused person has, it to file an amparo, whereupon the court will order that the trial be expedited.

B. Amparo

140. The right to amparo, first introduced in the Mexican legal system in 1840, is guaranteed in articles 103 and 107 of the Constitution. In the course of time, amparo has developed into a complex legal procedure used to appeal violation of individual rights and liberties by the authorities. The present law regulating amparo dates from 1936 and, in the opinion of many, including the Supreme Court, no longer corresponds to the needs of modern society, despite the occasional amendments made to it.

141. From the information he received, the Special Rapporteur formed the impression that the present system of amparo unnecessarily delays the process, especially in civil matters, where an estimated 50 per cent of all direct amparos are not resolved within six months.

142. The Special Rapporteur learned that amparo can be brought at any stage of the court proceedings. Against judgements of the court, a direct amparo can be filed, against interim decisions a so-called indirect amparo can be filed. Direct amparo is an additional form of appeal against the judgement, which can be appealed in the normal way to the higher court, or through amparo at the federal level. Amparo is as a rule heard by federal courts (by district judges at first instance, by collegiate tribunals at second instance). Many State courts perceive this as an interference with their independence and feel that it indirectly subjects them to supervision by federal courts, encroaching upon their jurisdiction. This system of double jurisdiction entails high economic costs. Amparo actions challenging the constitutionality of laws are heard by the collegiate tribunals at first instance and by the Supreme Court on appeal.

143. Amparo being a complicated legal procedure, its filing requires specialized legal assistance. If necessary, public defenders can file amparo. State public defenders, not federal public defenders, are the ones who would appear before the federal courts, for amparo against decisions and judgements by the State courts.

144. The impression exists that the amparo procedures are often abused, especially by private lawyers. From information provided by the federal First Collegiate Tribunal in Penal Matters, the Special Rapporteur learned that only 20 per cent of the amparos brought before that court in 2000 had been successful.

145. Concerns were expressed about the juridical practice of issuing amparo rulings "*para efectos*", that is, of telling the responding authority to correct the initial error in its decision or act. In these cases, the matter is returned to the erring authority, which will then proceed to correct its initial decision. From this correction a further amparo is again possible. This leads to long delays in the final resolution of a case, resulting in expense and insecurity for the other party. The Special Rapporteur was also told that in many cases the amparo rulings are not duly implemented, leading to a continuation of the original violation of the individual's rights. Amparo judgements are often not clear and sometimes do not specify how a given violation should be remedied.

146. The president of the Supreme Court has expressed himself in favour of reforming the amparo law and, on 30 April 2001, the Supreme Court forwarded a draft to that effect to Congress. The draft was prepared after consultation with the legal community and society in general. The draft law on amparo includes specific reference to the invoking of international human rights instruments to which Mexico is a party. It also redresses one of the main restrictions of the present amparo law, i.e. that the judgements granting amparo are not a binding precedent for application in subsequent similar cases.

147. As mentioned above (see para. 74) the State judiciaries have suggested amending the amparo law in order to give State courts jurisdiction to decide on amparos against acts, omissions or decisions of State authorities and judgements of State courts, leaving only amparos invoking the unconstitutionality of State or federal legislation to the federal judiciary.

C. Tribunals not belonging to the judicial power

148. The Special Rapporteur was informed that many specialized tribunals in Mexico are not part of the judiciary, but of the executive, and as such do not enjoy the guarantee of independence. This is the case for the labour boards (*juntas de conciliación y arbitraje*), the federal labour tribunals, the agricultural tribunals and the councils for minors.

149. The labour boards, both at the federal and at the State levels, are tripartite organs composed of representatives of the Government, employers and employees. Their members enjoy no guarantees of independence and the Special Rapporteur received many allegations that the boards are controlled by the employers. He also received complaints about the counsellors in labour matters, who allegedly regularly advise employees to accept a settlement of claims below the legal rate. Claims were also made that workers who do complain to the boards are threatened with dismissal.

D. Indigenous communities

150. Mexico has 11 million indigenous people belonging to 60 different communities with different languages and dialects. Illiteracy is said to be on average 43 per cent, and for indigenous women 58 per cent. The Special Rapporteur was informed that because of lack of interpreters in the courts, indigenous persons are regularly tried without understanding the proceedings, despite a constitutional right to an interpreter since 1992. Judges are also said to be unwilling to recognize the accused's right to be assisted by an interpreter as the lack of availability of interpreters would delay the process. The Special Rapporteur was informed that it can take up to one year to arrange for an official interpreter. Moreover, judges are reported to be ignorant of indigenous traditions, customs and law and, as a consequence, cultural diversity is not taken into account. Public defenders usually speak only Spanish and often are not familiar with indigenous dialects, customs and traditions. The Special Rapporteur heard reports that often members of indigenous communities sign the statement they give to the prosecutor's office in Spanish, even if they do not understand that language, without the public defender intervening on their behalf and demanding an interpreter.

151. The National Indigenous Institute is a government institution to promote the development of indigenous communities. For the first time since its establishment in 1948, an indigenous person was appointed in December 2000 as the head of the Institute. The Institute's administration of justice programme is present in 24 States. In general, it aims to promote access to justice for indigenous communities, review legislation and propose reforms to the judicial system. It undertakes studies of cultural differences and their impact on crime, gives legal advice to communities about agricultural matters and natural resources, and has several projects relating to penal law. Its penal law programmes include a bail bond programme, legal advice and defence, and a training programme for interpreters. It also administers a programme to encourage members of indigenous communities to make use of the civil registry. Through the Supreme Court it is also coordinating interaction of federal judges with traditional community leaders. A training and study programme on indigenous law and traditions is being developed with the Judicial Council.

152. Although 10 per cent of the population of Mexico is indigenous, their traditional legal system is not generally recognized by law. The Special Rapporteur learned that there has been some progress in some States, such as Oaxaca (where the constitution contains a special section on indigenous administration of justice) and Quinatanaroo (where one chamber of the TSJ hears appeals from traditional judges).

153. Article 8 of the Chihuahua constitution allows the authorities to take indigenous traditions and legal practice into account and prescribes that when crimes are committed among members of the indigenous people the traditional legal system shall be respected. This provision, however, has not yet been backed up by implementing legislation. The Special Rapporteur received complaints about the difficult access to courts for indigenous people in the Sierra area, where people have to walk for five hours in order to get to a judge. Moreover, the Special Rapporteur was informed that indigenous people often fall victim to armed groups linked to drug cartels and that these crimes go unpunished. For crimes committed against them by the military, the access to court for indigenous people is even more difficult, as the military court where they have to give their testimony is at a distance of 20 hours.

154. The Special Rapporteur met with a group of indigenous immigrants in the State of Chihuahua, who recounted how they were hired to work on a ranch (in the community of Jiménez) in slavery-like conditions: 60 days of uninterrupted work, including Sundays, for 60 pesos a day (reduced to half if the quota was not met) without breaks; they were not allowed to leave the ranch and were forced to buy necessities at the ranch shop; they had no medical or any other insurance; and received humiliating treatment, in apparent violation of the constitution. They alleged that the authorities were indifferent to their complaints and took the side of the employer instead. The Special Rapporteur was informed that these practices were quite common in States with many indigenous immigrants and that they had been brought to the attention of the State authorities on several occasions, to no avail.

155. In Nayarit, the Special Rapporteur received complaints that the police often fabricate evidence against indigenous people in order to cover up their own mistakes. The defence faces difficulty in finding witnesses who can come to court, since the closest court is sometimes two to three days away. The Special Rapporteur was told of an incident in April 2001, where the police interrupted a communal assembly and then shot and killed a boy who was running away. This case was being examined by the CEDH at the time of the Special Rapporteur's visit.

156. In Chiapas, the violent conflict between the Government and the EZLN has led to serious violations of human rights of the indigenous population. Paramilitary groups are said to be responsible for arbitrary executions and disappearances, which have not been properly investigated and prosecuted. With respect to the administration of justice, the Special Rapporteur received allegations of fabrication of evidence and unlawful arrests. A similar situation exists in the States of Oaxaca and Guerrero, where there also are armed indigenous groups.

E. Children

157. The Special Rapporteur was informed that at the federal level, as well as in most States, the legislation on child offenders violates the Convention on the Rights of the Child. The new law on the Protection of the Rights of Girls, Boys and Adolescents, which is effective as of 30 May 2000, attempts to integrate the Convention norms into national legislation. With respect to the administration of justice, article 45 (E) of the law provides that codes should be promulgated establishing the penal procedures for minors and creating specialized organs and authorities (including public ministries and judges). The law contains no guarantees for the independence of these various organs, nor does it define their roles. The law does not appear to have been followed up with implementing legislation, as a result of which the old system, which does not recognize minors as subjects but rather as objects of law, still continues in practice. Councils for minors are in charge of ordering measures for minors who have been found breaking the law. At the federal level, this council is an administrative organ, hierarchically subordinate to the Minister of the Interior. In most States, these councils are subordinate to the governor. The units for the defence of minors are part of the councils and the Special Rapporteur heard allegations that often minors are not properly represented. Each council is completely free to determine its measures and it was reported that these are often not proportionate with the offence committed, since other elements, such as the extent of family support and social environment, are also taken into account.

F. Status of women

158. The Special Rapporteur was informed that unequal treatment of women persists. He learned that the impunity for sexual violence against women was extremely extensive, and that, in the case of conviction, sentences were lenient. It was pointed out that victims' distrust of the justice system and the lack of protection for women who report that they have been victims of sexual violence contribute to the high rate of impunity. In this context, it was suggested that law enforcement personnel should be better trained and sensitized towards the special problems of victims of sexual violence, that a specialized unit should deal with this type of crime and that specialized courts should address problems of family violence.

159. In family matters, the position of women is generally weak because of their lack of resources. Often, the women have no access to amparo because of the costs involved, whereas the men, with greater economic resources, do. The Special Rapporteur also received complaints that it is very difficult for women to obtain enforcement of alimony payment.

160. In relation to women's rights, the Special Rapporteur received complaints in Chihuahua that it is the practice for women to be subjected to pregnancy tests by companies before being hired and that the State had failed to take any measures to stop this practice. If a woman becomes pregnant after having been hired, she is usually dismissed, even if this is against the law, and she is threatened not to file a complaint.

161. In Ciudad Juarez, a border city with approximately 1.5 million inhabitants, of whom 60 per cent have come from outside the State, lack of social coherence provides a fertile environment for crime. Since 1993, over 189 women have been murdered after having been sexually assaulted. Most of the women were between 15 and 25 years of age, were migrants, and worked in the assembly plants. Their bodies were found in deserted places, usually outside town. The Special Rapporteur notes that, certainly in the beginning, there was a great lack of sensitivity on the part of the police and prosecutors, who even went as far as to blame the women for their alleged low moral standards. This insensitivity and negligence on the part of the authorities is a matter of grave concern. In 1995, an Egyptian national, Omar Latif Shariff, was arrested on suspicion of having committed 90 murders. He has always claimed his innocence and in 1999 he was convicted for only one murder. After his capture the killings continued. In 1996, members of a gang, "*los Rebeldes*" of which Shariff was said to be the leader, were arrested. They have still not been tried. Only in 1998 was a special prosecutor appointed to investigate these crimes, after the CNDH had seriously criticized the lack of response by the authorities. The Special Rapporteur visited Ciudad Juarez, where he met with the special prosecutor, who has made efforts to professionalize the investigations. He was amazed to learn of the total inefficiency, incompetency, indifference, insensitivity and negligence of the police who investigated these cases earlier. In March 1999, the police arrested five members of another gang "*los Ruteros*", after a young girl survived an attack. The *Ruteros* confessed to 12 killings, but alleged that they have been tortured. NGOs claim that in 81 per cent of cases since 1993, the killers have not been identified. From figures provided by the special prosecutor, it appears that of the 60 cases presented by her to the courts since she took office, 11 resulted in a conviction, and another 28 were pending judgement. Although the Special Rapporteur was assured by the special prosecutor that in all 104 files relating to homicides of women had been presented to the

courts since 1993, in his meeting with the judges of Ciudad Juarez, they did not appear to be aware of the status of those cases. The insecurity created by this lack of effective response has severely weakened the rule of law in Ciudad Juarez.

XIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

162. The Special Rapporteur appreciates the willingness and openness of the Government and the various actors within the administration of justice to discuss problems affecting their respective institutions and agencies. The discussions with the NGO communities and civil society groups and individuals too were most constructive and informative.

163. The independence of the judiciary is the cornerstone for the rule of law in any democratic society, including Mexico. Though Mexico was constitutionally a democracy prior to 1994, there was no culture of judicial independence in the country. The rule of law was in shambles. Power was concentrated in the executive. The judicial power was seen as an extension of the executive power, compounded by incompetence, inefficiency, indifference and a disregard for the basic values and principles of democracy and the rule of law within the system. Impunity and corruption became endemic.

164. The amendments introduced to the Constitution in 1994 to strengthen the administration of justice and in particular to provide for separation of the judiciary from the other two arms of government were seen as the beginning of the transformation process for the administration of justice to combat the deterioration of law and order. However, the manner in which the amendments were brought about caused some concern, particularly when it resulted in there being no Supreme Court of the Federation for a period of two months. The establishment of the Judicial Council to recommend judicial appointments, promotions and discipline and to supervise judicial administration of the courts was seen as a step in the right direction, not only to separate the judiciary from the executive but also judicial functions from administrative functions. However, the composition of the Council, in particular the appointment of the chief justice as its president, and its performance have been the subject of criticism. The Special Rapporteur does not find it unusual to have the chief justice as the president of such an institution.

165. Pursuant to the 1994 amendments to the Constitution for the organization of the Federal Judicature, consequential amendments were made by the States to their constitutions to separate the State judiciary from the other two arms of government. However, there were some differences. In some States the separation was not seen in reality.

166. The transformation process since 1994 has been slow. Impunity and corruption appear to have continued unabated. Whatever the changes and reforms, they are not seen in reality. Public suspicion, distrust and want of confidence in the institutions of the administration in general and the administration of justice in particular are still apparent. The events of the past and the failure of the authorities to account for the large-scale impunity, corruption and human rights violations

have contributed to this loss of confidence. The latest report on disappearances between 1970 and 1985 published by the National Human Rights Commission clearly vindicates the public disenchantment with the Government.

167. On the basis of his discussions throughout the mission the Special Rapporteur believes that there is political will and determination on the part of the present administration to reform the administration of justice. In this regard the Special Rapporteur welcomes the statement reported to have been made recently by President Fox that "The justice that has been awaited for decades is beginning to become a reality ... no State interest can be above the rule of law". The President's pledge to appoint a special prosecutor and a five-member civilian support commission to bring to justice those responsible for the abuses disclosed in the report on disappearances, and his agreement to make public the nation's intelligence archives for the period 1970-1985 are steps in the right direction towards addressing the prevailing impunity in the country. However, the task of the Special Prosecutor to bring to justice the perpetrators will depend on the cooperation of the members of the previous administration, namely the Institutional Revolutionary Party (PRI) which still has considerable influence in both the Chamber of Deputies and the Senate.

168. Human rights commissions are important institutions for monitoring observance of human rights, educating the public on rights issues, investigating violations and recommending remedial actions. Failure or refusal to comply with a commission's recommendations could lead to public loss of confidence in the institution.

169. The Special Rapporteur noted with concern an apparent lack of continuity whenever a new administration came to power at the State level. The outgoing administrations took away records with them, to avoid investigations, and the new administrations would deflect criticisms by placing blame on the previous administrations. There obviously does not exist any appreciation of public accountability.

170. The Supreme Court of Justice of the Federation has begun to assert its independence. That has given encouragement to other judges at lower levels of the federal judiciary. However, it is not enough for individual judges to assert that they are independent. Judicial independence will only be realized when the judiciary as an institution and judges individually in their judicial performance are perceived by the people and the consumers of justice as independent.

171. Each segment in the administration of justice appears to be undertaking reforms. These reforms, however, are not coordinated. Often the Special Rapporteur heard one segment casting blame for one or some of the prevailing problems on another. Such uncoordinated reforms can be unproductive for the overall due administration of justice.

172. The revision of training programmes, and the recruitment of judges and prosecutors, public defenders and police through competitive examinations are steps in the right direction. However, in the light of the widespread incompetence of personnel, particularly in the Public Prosecutor's Office and the police, some of whom were also implicated in human rights violations and corruption, reforms may be impeded if such personnel are not removed from these institutions. In this regard the Special Rapporteur welcomes the initiative undertaken by the

Office of the Federal Attorney-General to develop a database that will ensure that officers dismissed for corruption or human rights violations are not recruited elsewhere in the public administration.

173. There appears to be a disparity between the quality of justice dispensed by the federal courts and by the courts at the State level. This is largely due to disparity in the availability of resources, both financial and human. Federal courts appear well funded. Under international law, the Federal Government of Mexico is answerable for the judicial system, whether it be at the federal or State level. Access to justice for the vast majority of the people of Mexico is through the State courts.

174. Failure to comply with court judgements is a serious negation of judicial independence. The refusal of some State governments to comply with the orders of the Electoral Tribunal is tantamount to contempt of that Tribunal. It is a basic principle of the rule of law that court judgements are executed expeditiously and efficiently. Article 17 of the Constitution of Mexico expressly provides for this. The problem could be the dependency on the executive for the enforcement of court judgements. However, it is the duty of the executive to see that court judgements are enforced.

175. Access to justice appears to be a major problem, particularly in the States. Many municipalities have no courts within easy access for the local community who need to seek justice. Such lack of access is even more acute at the appeal level, many States only having one appeal court, located in the capital city of the State.

176. Though there has been an increase in the budget for some State judiciaries, generally budgetary constraints hinder the judiciary in its performance. In some States the budget depends on the extent of good relations the chief justice maintains with the governor.

177. The Special Rapporteur notes with surprise that, in spite of widespread allegations of judicial corruption, hardly any judicial officer has been disciplined for such misconduct. Though he appreciates that judicial corruption is difficult to detect, failure to investigate it effectively could bring the disciplinary procedures of the federal Judicial Council and the State judicial councils, where they exist, into disrepute.

178. The want of impartiality of the military courts and the reluctance or unwillingness of civilian witnesses to appear before military courts to give evidence against military personnel are matters of concern. The public have no confidence in the military courts. For this reason, many prosecutions of military personnel accused of human rights violations before these tribunals are not pursued.

179. The legal profession is an integral part of the administration of justice. An independent legal profession gives strength and support for the maintenance of an independent judiciary. The entire administration of justice depends on the quality, integrity and independence of the legal profession, from which magistrates and judges, prosecutors and public defenders are drawn.

180. The Special Rapporteur notes with dismay that there is not an organized legal profession in Mexico. There is not an organized system of legal education in Mexico. There is no uniform code of ethics for lawyers. There is no procedure to discipline lawyers. In fact there is no system of accountability for lawyers. There are many who conduct legal practices without adequate qualification.

181. This total want of organization of legal education and qualification for practice, and the lack of organization of the profession, without any disciplinary procedures to ensure accountability, may have been the cause of the many ills in the administration of justice in Mexico over the years. It is in the interest of the lawyers of Mexico to address this situation and organize themselves as a profession, so that their integrity, independence and accountability are respected by the Government and society in general.

182. Harassment and intimidation of lawyers, particularly those handling human rights-related cases, are a matter of grave concern. Similarly the harassment of human rights defenders, whether lawyers or others, is a continuing concern. The recent murder of human rights lawyer Digna Ochoa y Placido illustrates this continuing menace. The governmental authorities have failed in their duty to protect these lawyers and defenders.

183. The problems faced by lawyers in gaining access to their clients in police detention centres and prisons are matters for concern. The authorities and their personnel in charge of these centres and prisons may be violating constitutional provisions and international standards protecting the rights of accused persons and others in their custody.

184. The services of public defenders and counselling assistants (in limited class of matters) are the only legal aid services provided by the Government. Though measures appear to be being undertaken to improve these services, the poor quality of services provided by public defenders continues to be a source of concern. This is more the case in the States. Lack of manpower, overwork, insufficient qualification or experience, and low salaries, particularly in the States, are some of the causes.

185. Universally accepted fair trial procedures also provided for in the Constitution of Mexico are often violated. Judges readily accept as evidence statements allegedly made under force, without examining whether the statement was made voluntarily; in some instances statements have been accepted as evidence even if the court had accepted that the accused had been subjected to torture. Another source of concern is the practice in some Mexican courts of the judge conducting simultaneous hearings. Although formally present on the court premises, he or she often delegates the recording of evidence to the secretaries and later signs the record as though the evidence had been recorded by himself or herself.

186. The Special Rapporteur welcomes the way in which the amparo procedure makes it possible to seek redress from the courts in cases where an individual's guarantees have been violated. However, after having learned about the way the procedure is implemented in practice, the Special Rapporteur is concerned about the delays it causes, its complexity and its high costs, hindering access to justice for all. In the Special Rapporteur's opinion it has, moreover,

contributed to a dual system of justice - State and federal - through which Mexico has avoided addressing serious problems of justice at the level of the States. It has also led to a feeling of frustration within the State judiciary.

187. With regard to the indigenous people and communities, the Special Rapporteur is concerned about the general lack of access to justice, the lack of interpreters and the lack of sensitivity within the legal system to their legal traditions. He is also concerned about the level of conflict between the indigenous communities and the authorities, in particular the police and the army.

188. The Special Rapporteur learned with horror about the prevalence of slavery-like working conditions for indigenous immigrants on ranches in the State of Chihuahua and expresses his concern that this practice may be prevalent in other parts of Mexico too.

189. The legal situation of children is of serious concern. Although the Law on the Protection of the Rights of Girls, Boys and Adolescents has been in effect since 30 May 2000, the remaining legislation has not been reviewed in order to make it consistent with the norms contained in this law. In particular, as regards the administration of justice for children and adolescents, no specialized tribunals have been created and minors continued to appear before councils which are fully dependent on the executive in proceedings that do not guarantee the children's rights.

190. The more than 189 murders of women in Ciudad Juarez in Chihuahua since 1994 remain a matter of grave concern. It was clear to the Special Rapporteur that these murders were inefficiently and incompetently investigated, if there were any investigations at all. The new special prosecutor appointed to investigate these murders has since put some order in her office. Following prosecutions, there have been some convictions and a few cases are pending.

191. Women in Mexico have not achieved equality. They suffer discrimination in the workplace, as well as in their daily lives.

B. Recommendations

192. The Special Rapporteur makes the following specific recommendations, arising from the above observations and conclusions:

(a) In the current review of the Constitution, the following matters should be given due consideration:

(i) The States should be required to provide in their respective constitutions for full security of tenure for judges at all levels. If appointments are to be for a fixed term, then it should be at least a 10-year non-renewable term;

(ii) The States should be also required to provide in their respective constitutions for the establishment of judicial councils;

(iii) A reasonable fixed percentage of the federal budget should be annually allocated for the judiciary. Similarly, the States should be directed to provide for such allocation in their respective constitutions;

(iv) The recent judgement of the Supreme Court to the effect that international treaties signed and ratified by the Government have supremacy over domestic laws should be entrenched in the Constitution;

(v) The Constitution should provide that recommendations of national and State human rights commissions should be binding on all authorities, including the Federal Government. In the event that, for any reason, the recommendations cannot be complied with, the authorities concerned should within a stated period of time give the reasons for non-compliance and these reasons should be made public;

(b) With regard to the judiciary:

(i) An evaluation must be undertaken of the number of additional courts needed, at both the federal and State levels, to meet the needs of the people for access to justice. Such additional courts once established must be provided with the resources, both human and financial, to dispense justice efficiently and competently;

(ii) In the evaluation of judicial appointments and in continuing legal education for judges after appointment emphasis must be given to international human rights standards and norms, including fair trial procedures. Consideration should be given to compulsory continued legal education for judges. The processes of judicial appointments at all levels must be made transparent;

(iii) In order to maintain its independence and integrity the judiciary must be provided with the power, the machinery and the resources to enforce its own judgements;

(iv) New legislation must be brought to the attention of the judiciary, the legal profession and the general public without delay. Texts of laws and judgements of superior courts should be readily available to all in the administration of justice, if possible through electronic means. Law libraries, both at the federal and State levels, should be provided with updated legal materials;

(v) A uniform code of ethics for magistrates and judges at all levels should be produced and published. Breach of the code, at least the more important provisions of the code, must be subject to disciplinary proceedings;

(vi) In order to address judicial corruption, consideration could be given to all magistrates and judges at all levels declaring their assets to the Judicial Council at the time of appointment and periodically thereafter;

(c) With regard to the Judicial Council:

(i) It must conduct its affairs independently of the other branches of government, including the Supreme Court, and dispel all publicly perceived suspicions of partiality; transparency and education of the public with regard to its functions would assist in dispelling such suspicions;

(ii) Judicial accountability strengthens judicial independence and integrity. The disciplinary mechanism for investigating complaints and adjudicating upon them must be transparent and conform with the minimum standards provided in Principles 17 to 20 of the Basic Principles on the Independence of the Judiciary;

(d) With regard to the military and military courts:

Crimes alleged to be committed by the military against civilians should be investigated by civilian authorities to allay suspicions of bias. In any event current legislation should be amended to provide for the civil judiciary to try cases of specific crimes of a serious nature, such as torture and killings, alleged to have been committed by the military against civilians outside the line of duty. Urgent consideration should be given to removing the military from policing public law and order in society;

(e) With regard to the Public Prosecutor's Office:

(i) The process of removal of incompetent and inefficient personnel from the office must be intensified to gain public confidence;

(ii) Recruitment based on legal and other qualifications, on merit and through examinations should be continued;

(iii) The United Nations Guidelines on the Role of Prosecutors, as well as the Standards of Professional Responsibility and Statement of Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors in April 1999 and the international human rights treaties should be included on the programme of training courses in order to instil professional prosecutorial values;

(f) With regard to public defenders, they should be made independent of the executive to make the defence in criminal cases where the accused cannot afford a private lawyer meaningful. Public defenders must be adequately remunerated, particularly in the States, and given a manageable workload. They should be licensed lawyers and should be given adequate

training, especially in international human rights norms and fair trial procedures. In the present process of transformation, the Government may wish to consider and study the possibility of providing a system of free legal services, with the cooperation of large law firms and university law faculties;

(g) With regard to the legal profession:

(i) It is imperative that the Government undertake without delay a study of the system of legal education and qualification to practise the legal profession in Mexico, at both at the federal and State levels;

(ii) There must be uniform criteria for qualification to practise, monitored and administered by an independent mechanism or institution composed of judges, lawyers, academics and representatives of the Public Prosecutor's Office;

(iii) The legal profession should be organized by legislation providing for a self-governing and regulating Bar association at both the federal and State levels. The independence of the profession should not be impinged on;

(iv) There must be a uniform code of ethics for the profession, enforceable by a self-disciplining mechanism established by law;

(v) Continuing legal education on all branches of the law for all lawyers at both the federal and State levels must be encouraged. The subjects must include international human rights norms;

(h) With regard to impunity:

(i) In addition to the abuses disclosed in the report on disappearances published by the Human Rights Commission, other human rights violations, including allegations of widespread corruption, some of it high profile, also need investigation; the public needs to be given answers to the questions "who", "why" and "how". Only then the public will begin to have confidence in public institutions;

(ii) In this regard, the Special Rapporteur urges all members of the past administration to support strongly the present administration in addressing the scourge of impunity which, left unaddressed, will remain the cancer of Mexican society and will gradually erode the fabric of society;

(iii) In the case of investigations of human rights violations or any high-profile crimes, including corruption, it would be desirable for the Public Prosecutor's Office to inform the public of the progress of investigations;

(iv) All personalities who are known to have committed human rights violations in the past should be removed from public office and the military. In any event, those with such a record should not be elected, appointed or recruited for any public office in the future;

(i) With regard to lawyers' access to their clients in police detention centres and prisons, the attention of the authorities in charge of these establishments must be drawn to the constitutional provisions protecting the rights of those detained and to Principles 5 to 8 of the Basic Principles on the Role of Lawyers. The authorities must be called upon to respect and adhere to these norms;

(j) With regard to harassment of lawyers and human rights defenders:

(i) The Government must provide adequate protection to lawyers and human rights defenders against all forms of threat, harassment and intimidation. In this regard, the Government's attention is drawn to Principle 17 of the Basic Principles on the Role of Lawyers, which states:

> "Where the security of lawyers is threatened as a result of discharging their function they shall be adequately safeguarded by the authorities."

With regard to human rights defenders, the Government's attention is drawn to its obligations under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;

(ii) Reports of such threats, harassment and intimidation must be thoroughly investigated and the perpetrators brought to justice;

(k) With regard to fair trial procedures:

(i) The Special Rapporteur reiterates the recommendation made by the Human Rights Committee in July 1999 that Mexico should "ensure that the burden of proof that a confession used in evidence has been made by the accused person of his own free will shall lie with the State and that confessions obtained by force cannot be used as evidence in trial proceedings".[10] He also joins the Special Rapporteur on torture in his recommendation that "statements made by detainees should not be considered as having probative value unless made before a judge".[11] All complaints of torture should be duly investigated and the perpetrators should be prosecuted;

(ii) The Special Rapporteur urges the Government to reopen all cases where persons were convicted on the basis of confessions where there are serious grounds to believe that they were obtained by force, such as the case of the so-called Loxicha prisoners. If these persons cannot be retried owing to legal procedural constraints then a special judicial commission should be set up to review their cases;

(iii) The practice of judges delegating the recording of evidence to secretaries should be discontinued;

(iv) The practice of conducting court proceedings in maximum security prisons should be discontinued;

(v) The practice of judges meeting with either the prosecutor or the defence lawyer in chambers without the other party being present must be discontinued;

(l) With regard to amparo applications, there should be a review of the amparo procedure and the law with a view to making it less costly, simpler, speedier and more effective in cases of violations of individual guarantees. Due consideration should also be given to the suggestion made by the TSJs of the States that State courts be given exclusive jurisdiction to deal with amparo applications emanating from the respective States, leaving challenges to the constitutionality of legislation to the Federal judiciary;

(m) With regard to other tribunals, the Government should examine the possibility of guaranteeing the independence of labour boards and agricultural tribunals and of integrating them into the judicial power;

(n) With regard to the indigenous communities:

(i) The agreements on the rights and culture of the indigenous people signed by the Government and the EZLN should be implemented and indigenous traditions and law should be recognized to the extent that they do not conflict with the main legal system. In the case of non-Spanish speaking indigenous accused persons appearing before the courts, the presence and assistance of a qualified interpreter needs to be guaranteed. If no interpreter is available within a reasonable time, measures should be taken to prevent the continued pre-trial detention of the accused;

(ii) Immediate measures should be taken to abolish slavery-like working conditions for indigenous immigrants;

(o) With regard to children, the Law on the Protection of the Rights of Girls, Boys and Adolescents should be implemented without delay. If any enabling legislation is needed to enforce the law, such legislation should be enacted without delay. Independent courts must be set up to deal with all juvenile cases;

(p) With regard to the status of women:

(i) All the remaining uninvestigated murders of more than 189 women in Ciudad Juarez should be thoroughly investigated and the perpetrators brought to justice. The courts should expedite the trials still pending;

(ii) Attention should be given to eliminating discriminatory practices against women in workplaces. Programmes should be developed to enhance access to justice for women. Police and prosecutors should be given training on how to deal with victims of sexual violence. Consideration should be given to the setting up of special units to deal with crimes of violence against women;

(q) General - pilot project:

In order to strengthen the rule of law and the independence of the judiciary in Mexico, in accordance with international standards, the Special Rapporteur proposes the development of a pilot project in two States, which could be implemented within the framework of the technical cooperation project at present being undertaken in Mexico by the Office of the United Nations High Commissioner for Human Rights. The Special Rapporteur found great enthusiasm for such a project in the State of Nayarit and would recommend that this State be one of the two in which the project is developed. The project should not only aim at training judges and lawyers on how to apply human rights norms in the daily practice of the administration of justice, and at increasing awareness of the independence of the judiciary as well as of the role of the public defenders, but should also focus on reviewing existing procedures and practices in the light of international standards of administration of justice. The progress of the project should be monitored by a group of independent experts over a period of one or two years. Thereafter, if found successful, it could be applied in other States.

Notes

[1] It was reported that in 1998 the collegiate tribunals had a caseload of 160,810 cases and in 2000 of 252,502 cases. The caseload for the unitary circuit courts was 32,657 in 1998 and 37,507 in 2000, and for district judges 244,157 in 1998 and 247,321 in 2000.

[2] See José Antonio Caballero and Hugo A. Concha, Unexplored Institutions: Mexican State Courts, Instituto de Investigaciones Jurídicas, UNAM 2000.

[3] The case of Judge Humberto Ortega Zurita was brought to the Special Rapporteur's attention. In 1995, he filed a complaint against his predecessor, the sixth district judge of Salina Cruz, Oaxaca, in relation to money, drugs and weapons which had disappeared while in security of the court. The complaint was not even acknowledge by the Judicial Council whereas Judge Humberto Ortega Zurita was then summoned to a disciplinary hearing for presumed failures while he was a judge in Campeche. Another case which was brought to the Special

Rapporteur's attention is the one against Xóchitl Guido Guzmán, second district judge of Acapulco, Guerrero. After having examined complaint 26/99, the Judicial Council found that the judge had not implemented an order of amparo and, as a consequence, four indigenous detainees had remained unlawfully in detention for 35 days. However, the complaint against the judge was dismissed, because the Judicial Council considered that the excessive workload of the judge justified the delay. The judge has since been promoted to magistrate.

[4] Since 1999, the time frame for a crime to be defined as *in flagrante delicto* has been expanded to 48 hours after the crime was committed, if the victim or an eyewitness has identified the perpetrator, if the person is found with an instrument used in the crime or an object obtained through the crime, or if there are other indications that he participated in the crime.

[5] IACHR, Report on the situation of human rights in Mexico, 1998, OEA/Ser.L/V/II.100, Doc. 7, Rev.1, para. 219.

[6] See also the report "Mexico: daring to raise their voices", Amnesty International, December 2001, which describes many instances of harassment of human rights defenders.

[7] See also the recommendation made by the Special Rapporteur on torture in his report on his mission to Mexico (E/CN.4/1998/38/Add.2, para. 88 (j)), that serious crimes committed by military personnel against civilians should be subject to civilian justice.

[8] Before 1917, the criminal justice system in Mexico was almost fully inquisitorial in nature. The judiciary controlled the investigative stage, as well as the trial and sentencing stages. When the Constitution was enacted in 1917, it was considered necessary to achieve more equilibrium between the Public Prosecutor's Office and the judiciary, and to establish an accusatory system. The Public Prosecutor's Office was given the main role in the system as the investigative and accusatorial body. However, subsequent amendments to the Constitution, as well as practice, has given the Public Prosecutor's Office a much more influential role than originally intended. (See the publication Form without Substance: Mexican Criminal Procedure and Human Rights, Lawyers Committee on Human Rights, PRODH, 2000.)

[9] See "Diagnóstico sobre la administración de justicia en las entitades federales. Un estudio institucional sobre la justicia local en México" by Hugo Alejandro Concha Cantú and José Antonio Caballero Juárez, Instituto de Investigaciones Jurídicas, UNAM, chapter V (A.d).

[10] See Human Rights Committee, Concluding Observations on Mexico, 27 July 1999, CCPR/C/79/Add.109, para. 7.

[11] See report of the Special Rapporteur on torture on his visit to Mexico, E/CN.4/1998/38/Add.2 of 14 January 1998, para. 88 (d).

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